

**Exhibit B**

Page 1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 11 CIV 0691 (LAK)

4 \_\_\_\_\_  
5 VIDEOTAPED DEPOSITION OF JOHN McDERMOTT

6 \_\_\_\_\_  
7 May 21, 2013

8 \_\_\_\_\_  
9 CHEVRON CORPORATION,  
10 Plaintiff,  
11 against  
12 STEVEN DONZIGER, et al.,  
13 Defendants.

14 \_\_\_\_\_

15 Pursuant to Notice and Subpoena, the  
16 videotaped deposition of JOHN McDERMOTT, called by  
17 Defendants, was taken on Tuesday, May 21, 2013,  
18 commencing at 10:05 a.m., at 1801 California Street,  
19 Suite 4200, Denver, Colorado, before Kelly A.  
20 Mackereth, Certified Shorthand Reporter, Registered  
21 Professional Reporter, Certified Realtime Reporter  
22 and Notary Public within Colorado.

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| <p>1 APPEARANCES:<br/>     2 GIBSON DUNN &amp; CRUTCHER LLP<br/>     200 Park Avenue<br/>     3 New York, New York 10166<br/>         Attorneys for Plaintiff<br/>     4 BY: STEPHEN HENRICK, ESQ.<br/>         (By video conference)<br/>     5 shenrick@gibsondunn.com<br/>         RANDY MASTRO, ESQ.<br/>     6 rmastro@gibsondunn.com<br/>         (By video conference for portion)<br/>     7 RACHEL BROOK, ESQ.<br/>         (By video conference for portion)<br/>     8 rbrook@gibsondunn.com<br/>         and<br/>     9 GIBSON DUNN &amp; CRUTCHER LLP<br/>         1801 California Street<br/>     10 Suite 4200<br/>         Denver, Colorado 80211<br/>     11 Attorneys for Plaintiff<br/>         BY: ROBERT BLUME, ESQ.<br/>     12 rblume@gibsondunn.com<br/>         ALLISON KOSTECKA, ESQ.<br/>     13 akostecka@gibsondunn.com<br/>     14<br/>     15 GOMEZ LLC<br/>         111 Quimby Street<br/>     16 Suite 8<br/>         Westfield, New Jersey 07090<br/>     17 Attorneys for Defendants Javier<br/>         Payaguaje Payaguaje and Hugo Gerardo<br/>     18 Camacho Namajo<br/>     BY: JULIO C. GOMEZ, ESQ. (For Portion)<br/>     19 (By speakerphone)<br/>     jgomez@gomezllc.com<br/>     20<br/>     21 BROWNSTEIN HYATT FARBER SCHRECK<br/>         410 Seventeenth Street<br/>     22 Suite 2200<br/>         Denver, CO 80202-4432<br/>     23 Attorneys for the Deponent<br/>         BY: LAWRENCE W. TREECE, ESQ.<br/>     24 ltreece@bhfs.com<br/>     25</p> | <p>Page 2</p> <p>1 * * * * *<br/>     2 PROCEEDINGS<br/>     3 THE VIDEOGRAPHER: Okay. We are on the<br/>     4 record at 10:05. My name is Joel Coriat representing<br/>     5 Veritext. The date today is May 21st, 2013. This<br/>     6 deposition is being held in the office of Gibson<br/>     7 Dunn &amp; Crutcher located at 1801 California Street,<br/>     8 Suite 4200 in Denver, Colorado.<br/>     9 The caption of this case is Chevron<br/>     10 Corporation versus Steven Donziger, et al. in the<br/>     11 U.S. District Court, Southern District of New York.<br/>     12 The name of the witness is John McDermott.<br/>     13 At this time the attorneys will identify<br/>     14 themselves and the parties they represent, after<br/>     15 which our court reporter, Kelly Mackereth, from<br/>     16 Veritext will swear in the witness.<br/>     17 MR. BLUME: Your Honor, Robert Blume and<br/>     18 Allison Kostecka for Chevron.<br/>     19 MR. TREECE: Your Honor, Lawrence W.<br/>     20 Treece representing Mr. McDermott. We're both with<br/>     21 Brownstein Hyatt Farber &amp; Schreck.<br/>     22 MR. GOMEZ: Julio Gomez on behalf of<br/>     23 defendants Hugo Gerardo and Javier Payaguaje.<br/>     24 THE SPECIAL MASTER: I'm Max Gitter, the<br/>     25 Special Master. And with me is my associate Justin</p> |
| <p>1 CONTINUED APPEARANCE:<br/>     2 ALSO PRESENT:<br/>         HON. MAX GITTER (Ret.),<br/>     3 Special Master<br/>     4 JUSTIN ORMAND, ESQ., Assistant to the<br/>         Special Master<br/>     5<br/>         JOEL CORIAT, Videographer<br/>     6 * * * * *<br/>     7<br/>     8<br/>     9<br/>     10<br/>     11<br/>     12<br/>     13<br/>     14<br/>     15<br/>     16<br/>     17<br/>     18<br/>     19<br/>     20<br/>     21<br/>     22<br/>     23<br/>     24<br/>     25</p>  | <p>Page 3</p> <p>1 Ormand.<br/>     2 Mr. Gomez, would you please confirm what<br/>     3 we know to be the case, that Mr. Donziger has chosen<br/>     4 not to be -- attend this deposition?<br/>     5 MR. GOMEZ: Yes, that is the case. My<br/>     6 understanding is he is traveling with the purpose of<br/>     7 chairing substitute counsel.<br/>     8 THE SPECIAL MASTER: Thank you, sir.<br/>     9 Go ahead.<br/>     10 JOHN McDERMOTT,<br/>     11 having been first duly sworn, was examined and<br/>     12 testified as follows:<br/>     13 THE SPECIAL MASTER: I think we're ready.<br/>     14 MR. TREECE: Your Honor, if I might,<br/>     15 before we start, I asked Mr. Blume's permission to<br/>     16 say this. Mr. McDermott is appearing today pursuant<br/>     17 to subpoena, and he is also appearing pursuant to a<br/>     18 court order issued by the Court on May 17 and an<br/>     19 agreement regarding privilege issues entered into by<br/>     20 the parties on that date.<br/>     21 We anticipate that much of the inquiry of<br/>     22 Mr. McDermott will be of material that would<br/>     23 otherwise be attorney work product, attorney-client<br/>     24 privilege, or client confidences.<br/>     25 This arises out of Mr. McDermott and</p>  |

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| <p style="text-align: right;">Page 6</p> <p>1 Brownstein's former representation of approximately<br/>2 47 of the individual native Ecuadorian plaintiffs in<br/>3 the underlying case.<br/>4 And we interpret the Court's order as<br/>5 requiring Mr. McDermott to testify regardless of any<br/>6 claims of attorney-client privilege, work-product<br/>7 privilege, or client confidences. And Mr. McDermott<br/>8 is prepared to do so.</p> <p>9 We also interpret the Court's order as<br/>10 relieving Mr. McDermott, me, or Brownstein from<br/>11 interposing any objections based on attorney-client<br/>12 privilege, work product, or client confidences that<br/>13 might otherwise be appropriate to protect the<br/>14 interests of Mr. McDermott and Brownstein's former<br/>15 clients. And we do not intend to interpose any<br/>16 independent objections to protect those interests.</p> <p>17 Some we understand of the plaintiffs in<br/>18 this action are former clients, and we will answer<br/>19 any question that is asked regardless of whether it<br/>20 may call for protected information, unless objection<br/>21 is made by the defendants, in which case we will not<br/>22 answer until that is resolved and we are ordered to<br/>23 do so.</p> <p>24 And we will independent of the Court's<br/>25 order treat any failure of defendants to object</p> | <p style="text-align: right;">Page 8</p> <p>1 that correct?<br/>2 A Correct.<br/>3 Q And just to quickly go through a little<br/>4 bit of your background. You are a licensed attorney<br/>5 in the state of Colorado?<br/>6 A Yes.<br/>7 Q Are you licensed to practice law in any<br/>8 other state?<br/>9 A I don't -- I don't believe so.<br/>10 Q Have you sat for the bar in any other<br/>11 state?<br/>12 A I have not sat for the bar in any other<br/>13 state. And just going back to the previous question,<br/>14 I have practiced -- I have been admitted for purposes<br/>15 of practicing in certain other states, but I don't<br/>16 think I'm formally licensed in the sense you may have<br/>17 been asking.<br/>18 Q Okay. Have you ever received a pro hac<br/>19 vice admission for practice in the state of New York,<br/>20 as you recall?<br/>21 A I don't recall. I think I have, but I<br/>22 don't -- in fact, I'm almost certain that I have, but<br/>23 I don't recall the cases.<br/>24 Q Okay. You're a 1981 law graduate from the<br/>25 University of Michigan; is that correct?</p>               |
| <p style="text-align: right;">Page 7</p> <p>1 independently as a waiver of any privilege objection<br/>2 they may have.</p> <p>3 THE SPECIAL MASTER: Thank you, sir.</p> <p>4 EXAMINATION</p> <p>5 BY MR. BLUME:</p> <p>6 Q Mr. McDermott, how are you today?</p> <p>7 A I'm fine. Thank you.</p> <p>8 Q If you could -- and I now forget whether<br/>9 you spelled your last name for the reporter. Did we<br/>10 go through that?</p> <p>11 If you could state your first and last<br/>12 name and spell your last name.</p> <p>13 THE SPECIAL MASTER: Mr. Blume, if you<br/>14 could move your microphone or speak up or something.<br/>15 We're having -- at least I'm having trouble hearing<br/>16 you.</p> <p>17 MR. BLUME: Is this better, Your Honor?</p> <p>18 THE SPECIAL MASTER: Yes, much better.</p> <p>19 MR. BLUME: Okay.</p> <p>20 Q (BY MR. BLUME) If you could state your<br/>21 first and last name and spell your last name for the<br/>22 record, please?</p> <p>23 A John McDermott, M-c-D-e-r-m-o-t-t.</p> <p>24 Q And, Mr. McDermott, you're a shareholder<br/>25 at the Brownstein Hyatt Farber &amp; Schreck firm; is</p>   | <p style="text-align: right;">Page 9</p> <p>1 A Correct.<br/>2 Q How long have you been at the Brownstein<br/>3 firm, sir?<br/>4 A For just over five years.<br/>5 Q And before that you were at Holme Roberts<br/>6 and Owen; is that correct?<br/>7 A Correct.<br/>8 Q How long were you at the Holme Roberts<br/>9 firm?<br/>10 A Oh, 13 or 14 years.<br/>11 Q Okay. Did you join Brownstein as a<br/>12 shareholder in that firm?<br/>13 A Yes. We have a two-tier shareholder. I<br/>14 joined as an income shareholder and then was<br/>15 subsequently made an equity shareholder.<br/>16 Q What was your status when you -- in<br/>17 January of 2010 when you first got involved with some<br/>18 of the Ecuadorian plaintiffs in this case?<br/>19 A I'm not certain that -- at our firm when<br/>20 they bring a lateral in you have to be an income<br/>21 shareholder for two years before you're considered<br/>22 for equity. So I've been there five years so that --<br/>23 I'm not sure how that works out.<br/>24 Q But you were -- by shareholder at<br/>25 Brownstein, that's similar to a partner at other</p> |

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| <p style="text-align: right;">Page 10</p> <p>1 firms; is that correct?</p> <p>2 A Correct.</p> <p>3 Q Whether income or equity, suffice to say</p> <p>4 in January of 2010 you were a shareholder or a</p> <p>5 partner at the Brownstein firm; is that correct?</p> <p>6 A Correct.</p> <p>7 Q You understand obviously the oath you took</p> <p>8 today; is that correct?</p> <p>9 A Yes.</p> <p>10 Q And that this a deposition, as Mr. Teece</p> <p>11 noted, conducted with -- in connection to a federal</p> <p>12 proceeding in the Southern District of New York. Are</p> <p>13 you aware of that?</p> <p>14 A Yes.</p> <p>15 Q Is there anything that happened in the</p> <p>16 last couple of days which would impede your ability</p> <p>17 to give truthful and honest testimony today?</p> <p>18 A No.</p> <p>19 Q Are you taking any medications or</p> <p>20 otherwise have anything about you which may inhibit</p> <p>21 your ability to give truthful and honest testimony</p> <p>22 today?</p> <p>23 A No.</p> <p>24 Q Have you ever been deposed before, sir?</p> <p>25 A Yes.</p>   | <p style="text-align: right;">Page 12</p> <p>1 A Yes.</p> <p>2 Q And I will try very hard not to interrupt</p> <p>3 you because the reporter will have a difficult time</p> <p>4 taking down our statements if we speak at the same</p> <p>5 time. And I would ask, similarly, if you would let</p> <p>6 me finish my question, then we can avoid that</p> <p>7 problem.</p> <p>8 Is that okay?</p> <p>9 A Yes.</p> <p>10 Q All right. As Mr. Teece noted earlier,</p> <p>11 there may be objections to portions of your testimony</p> <p>12 either by your attorney, Mr. Teece -- who himself is</p> <p>13 a shareholder at Brownstein; is that correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. -- or by Mr. Gomez, who is on the</p> <p>16 phone. And if you hear an objection, sir, I would</p> <p>17 ask that you delay your response to my question until</p> <p>18 the special master has an opportunity to rule on that</p> <p>19 objection.</p> <p>20 Is that okay?</p> <p>21 A Yes.</p> <p>22 Q Okay. If at any point in time,</p> <p>23 Mr. McDermott, you don't understand my question or</p> <p>24 you feel as though my question is unclear, if you</p> <p>25 could ask me to clarify it to make sure that my</p> |
| <p style="text-align: right;">Page 11</p> <p>1 Q How many times?</p> <p>2 A Once.</p> <p>3 Q How long ago?</p> <p>4 A Probably 20 years ago.</p> <p>5 Q Okay. And was that in your role as an</p> <p>6 attorney or as a witness or a party?</p> <p>7 A My recollection is that I represented a</p> <p>8 co -- I represented a defendant in a criminal case</p> <p>9 and I was deposed because of some alleged misconduct</p> <p>10 by another defendant, but I don't recall the</p> <p>11 circumstances.</p> <p>12 Q Okay. In the last ten years can I assume</p> <p>13 by the fact that you are a commercial litigator that</p> <p>14 you've been involved in depositions, taken</p> <p>15 depositions and defended depositions in the course of</p> <p>16 your career?</p> <p>17 A Yes.</p> <p>18 Q So you are -- you're familiar with the</p> <p>19 ground rules, I imagine, but I will, if you'll</p> <p>20 indulge me, just go over them briefly so that we're</p> <p>21 clear today.</p> <p>22 You understand, do you not, that for the</p> <p>23 reporter sitting to your right you need to give a</p> <p>24 verbal response and not a head nod or a shake.</p> <p>25 Do you understand that?</p> | <p style="text-align: right;">Page 13</p> <p>1 question -- to make sure that your answers are, in</p> <p>2 fact, answering the question that I tried to</p> <p>3 articulate.</p> <p>4 Is that okay?</p> <p>5 A Yes.</p> <p>6 Q Okay. The special -- the order of the</p> <p>7 special master number 3 indicates that we will take</p> <p>8 two breaks during the morning, and that's our</p> <p>9 practice.</p> <p>10 If, however, you need an additional break</p> <p>11 for whatever reason, so long as a question is not</p> <p>12 pending, if you could just signal to me or ask for a</p> <p>13 break. And with the special master's permission,</p> <p>14 we'll try to accommodate that, okay?</p> <p>15 A Great.</p> <p>16 Q All right. How long, if you can estimate</p> <p>17 for me, did you spend preparing for this deposition,</p> <p>18 sir?</p> <p>19 A I didn't.</p> <p>20 Q Okay. And so by that answer I assume that</p> <p>21 in advance of this deposition specifically you didn't</p> <p>22 review any documents that might refresh your</p> <p>23 recollection at all?</p> <p>24 A That's correct.</p> <p>25 Q All right. Did you participate in the</p>   |

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| <p style="text-align: right;">Page 14</p> <p>1 document collection and production that your firm did<br/>2 as a result of a subpoena to it?</p> <p>3 A Yes.</p> <p>4 Q All right. And are you familiar, sir,<br/>5 that the production was approximately 500 pages,<br/>6 about 75 or so documents; does that sound right?</p> <p>7 A Yeah, I'm sorry. I don't remember the<br/>8 scope of what was produced.</p> <p>9 Q All right. During the course of that<br/>10 collection and production, did you have occasion at<br/>11 that point to review some of those documents?</p> <p>12 And did that review refresh your memory as<br/>13 to things that occurred in and around January and<br/>14 February, March of 2010?</p> <p>15 A Yes, a bit. Although as I was reviewing<br/>16 the documents, as I recall, I was reviewing for<br/>17 purposes of privilege, I think, rather than<br/>18 substance.</p> <p>19 Q Okay. I understand from my review of the<br/>20 documents that you worked primarily with two other<br/>21 attorneys at Brownstein in this matter; is that<br/>22 correct?</p> <p>23 A Correct.</p> <p>24 Q Michael Hoke, H-o-k-e; is that right?</p> <p>25 A Yes.</p>            | <p style="text-align: right;">Page 16</p> <p>1 firm; do you recall?</p> <p>2 A I would guesstimate two to three years<br/>3 ago.</p> <p>4 Q Okay. And did she go to -- did she remain<br/>5 in Denver and go to another firm; do you know?</p> <p>6 A I think, but I'm not certain, she's an<br/>7 assistant attorney general for the State of Colorado.</p> <p>8 Q Okay. During the course of the document<br/>9 collection and production, did you work with<br/>10 Mr. Hoke -- well, let me ask you this, was<br/>11 Ms. Englert at the Brownstein firm during the time<br/>12 you collected documents in this matter?</p> <p>13 A No.</p> <p>14 Q Okay. Did you work with Mr. Hoke in that<br/>15 effort of collection and production of documents in<br/>16 response to the subpoena?</p> <p>17 A Yes.</p> <p>18 Q Before your deposition today -- and I'll<br/>19 frame that to say more broadly let's say within the<br/>20 last six months, have you had occasion to speak to<br/>21 Steven Donziger about this matter or the litigation<br/>22 in New York?</p> <p>23 A No.</p> <p>24 Q Do you recall when the last time was that<br/>25 you spoke with Steven Donziger, approximately?</p> |
| <p style="text-align: right;">Page 15</p> <p>1 Q And he's, as I understand it -- well, and<br/>2 Ericka Englert; am I pronouncing that right?</p> <p>3 A That's right.</p> <p>4 Q And as I can put it together, Ericka<br/>5 Englert was a more senior associate at the Brownstein<br/>6 firm in and around the January time frame of 2010; is<br/>7 that right?</p> <p>8 A Yes.</p> <p>9 Q And Michael was slightly more junior than<br/>10 Ericka?</p> <p>11 A Yes.</p> <p>12 Q Prior to your deposition today, did you<br/>13 have an occasion to speak with either Mr. Hoke or<br/>14 Ms. Englert about your representation of the LAPs in<br/>15 2010?</p> <p>16 A Well, I haven't spoken with Ericka for a<br/>17 couple years since as they left the firm. I<br/>18 routinely work with Michael Hoke so I speak with him<br/>19 numerous sometimes a day.</p> <p>20 Yesterday we were talking about a matter<br/>21 that needed some attention and I commented that I<br/>22 would be out of the office. And then I said, I'm<br/>23 giving a deposition in this matter. And he<br/>24 acknowledged that, but we didn't talk substance.</p> <p>25 Q When did Ms. Englert leave the Brownstein</p> | <p style="text-align: right;">Page 17</p> <p>1 A I can't give you a date, but it would be<br/>2 within a day or two of the -- of e-mails where we<br/>3 talked about withdrawing.</p> <p>4 Q Okay. So 2010 is fair to -- sometime in<br/>5 the first or second quarter of 2010; is that fair?</p> <p>6 A Yes.</p> <p>7 Q There are other lawyers involved in the<br/>8 New York case and have been involved in the New York<br/>9 case, one of whom is on the phone today, Julio Gomez.<br/>10 Have you spoken with him at all?</p> <p>11 A I don't recall speaking with him. I<br/>12 recall having one discussion with a lawyer, one,<br/>13 maybe two discussions with a lawyer from Texas six to<br/>14 eight weeks ago about the subpoena.</p> <p>15 Q And if I mention the Smyser law firm, does<br/>16 that sound familiar with the lawyer from Texas?</p> <p>17 A I don't believe that's the gentleman's<br/>18 name I spoke to.</p> <p>19 Q Larry Veselka?</p> <p>20 Thank you.</p> <p>21 A That may be it.</p> <p>22 Q Okay.</p> <p>23 A I'm sorry, I just don't remember.</p> <p>24 Q And when you say about the subpoena, was<br/>25 that the subpoena that Brownstein received for</p>  |

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| <p style="text-align: right;">Page 18</p> <p>1 documents or the subpoena to testify today?</p> <p>2 A The former.</p> <p>3 Q Okay. And did you receive any instruction</p> <p>4 from Mr. Veseika about how to respond to the document</p> <p>5 subpoena?</p> <p>6 A Well, I got the sense that he was hoping</p> <p>7 to give me instructions, but I didn't take any</p> <p>8 instructions. I mean, he wanted to talk about</p> <p>9 privilege issues and a host of other things, which</p> <p>10 I -- I didn't know whether it was appropriate. So I</p> <p>11 didn't speak with him.</p> <p>12 Q Okay. When you say you didn't speak with</p> <p>13 him, did you actually have a conversation but not</p> <p>14 speak of those topics or did you simply try to</p> <p>15 arrange an actual phone call and never set it up?</p> <p>16 A My recollection is we did have a brief</p> <p>17 conversation where he wanted to talk, nothing</p> <p>18 inappropriate. I mean, I just think he was concerned</p> <p>19 about waiver issues and -- but I don't believe we --</p> <p>20 we didn't ever have a substantive discussion about</p> <p>21 it.</p> <p>22 Q Have you spoken with anyone from the Keker</p> <p>23 law firm out of Northern California, John Keker or</p> <p>24 any of his associates?</p> <p>25 A I don't believe so.</p>  | <p style="text-align: right;">Page 20</p> <p>1 A Yes, I'm sure he did, but all I recall is,</p> <p>2 you know, one of the top law firms in New York.</p> <p>3 Q Do you recall specifically when -- do you</p> <p>4 recall if that was in January of 2010?</p> <p>5 A I don't recall.</p> <p>6 Q Okay.</p> <p>7 MR. BLUME: Your Honor, in front of you is</p> <p>8 a box of documents which are identified by tabs. I</p> <p>9 will identify the document by tab number and then</p> <p>10 assign it an exhibit number beginning with</p> <p>11 Exhibit 4000. So I would ask that you be handed tab</p> <p>12 number 2, which I will label as Exhibit 4000.</p> <p>13 (Exhibit 4000 marked.)</p> <p>14 MR. BLUME: And I will hand a copy of it</p> <p>15 to the witness, as well as one to Mr. Treece.</p> <p>16 And, Mr. Gomez, I understand that there's</p> <p>17 an arrangement made to get you copies of these as</p> <p>18 well.</p> <p>19 MR. GOMEZ: Yes, that's correct. My</p> <p>20 understanding is that I will be e-mailed documents as</p> <p>21 they are marked.</p> <p>22 MR. BLUME: And Ms. Kostecka sitting to my</p> <p>23 right is attempting to do that now. So if you could</p> <p>24 indicate when you've received it. And I will proceed</p> <p>25 with your permission, Mr. Gomez. But if you would</p> |
| <p style="text-align: right;">Page 19</p> <p>1 Q Throughout the course of this morning,</p> <p>2 Mr. McDermott, I'll ask you a series of questions to</p> <p>3 see what it is you remember, and then I'll try to</p> <p>4 refresh your memory with some documents if you have a</p> <p>5 difficult time.</p> <p>6 So let me start by asking you, do you</p> <p>7 recall back in the January 2010 time frame how you</p> <p>8 first got contacted about getting involved in this</p> <p>9 action in Colorado?</p> <p>10 A Norm Brownstein is the senior name partner</p> <p>11 in our law firm. And Norm -- as I recall, Norm</p> <p>12 summoned me to his office, as he does periodically,</p> <p>13 and said that he I think had received a phone call</p> <p>14 from a friend of his who's a lawyer in New York for</p> <p>15 one of the large Wall Street law firms. And I think</p> <p>16 he said -- I think Norm said that this lawyer</p> <p>17 indicated that his firm was somehow involved in</p> <p>18 working with Mr. Donziger on this case.</p> <p>19 And Norm just told me to call</p> <p>20 Mr. Donziger, as I recall, and I did. And that was</p> <p>21 really -- that's kind of how Norm operates. And he</p> <p>22 wasn't really in the loop anymore. So I just kind of</p> <p>23 took it and ran with it.</p> <p>24 Q Do you recall whether Mr. Brownstein told</p> <p>25 you the name of that firm?</p> | <p style="text-align: right;">Page 21</p> <p>1 like to see the document first, I'll represent to you</p> <p>2 that Exhibit 4000 are the time sheets from the</p> <p>3 Brownstein firm.</p> <p>4 MR. GOMEZ: That's fine.</p> <p>5 Q (BY MR. BLUME) Okay. If you could thumb</p> <p>6 through Exhibit 4000, Mr. McDermott, and tell me</p> <p>7 whether this, to the best of your knowledge, is an</p> <p>8 accurate reflection of the time sheets between</p> <p>9 January 19th, 2010 and March 24th, 2010 for the</p> <p>10 matter listed here as Daniel Carlos Lusitande</p> <p>11 Yaiguaje, I believe that's a misspelling, and Stratus</p> <p>12 Consulting, care of the law offices of Steven R.</p> <p>13 Donziger.</p> <p>14 Do you see that, sir?</p> <p>15 A Yes.</p> <p>16 Q And is this -- does this fairly and</p> <p>17 accurately reflect to you the form that the time</p> <p>18 sheets at Brownstein get printed on a matter such as</p> <p>19 this?</p> <p>20 A Yes. And I just want to be clear.</p> <p>21 Obviously, these aren't the time sheets. These are</p> <p>22 the bills.</p> <p>23 Q Right. And my mistake, you're right.</p> <p>24 These are the --</p> <p>25 Does this reflect the form of the invoice</p>  |

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| <p style="text-align: right;">Page 22</p> <p>1 that the Brownstein firm would send to a client in<br/>2 anticipation of payment?</p> <p>3 A Yes.</p> <p>4 Q And do you recognize this and can you<br/>5 identify this as, in fact, the invoice the Brownstein<br/>6 firm sent to Steven Donziger for payment in the<br/>7 Payaguaje matter?</p> <p>8 A Yes, it is.</p> <p>9 Q Okay. Does looking at this time sheet,<br/>10 Exhibit 4000, refresh your memory as to when you were<br/>11 first contacted about the engagement?</p> <p>12 A I'm sure it would have been January 18th<br/>13 or 19th of 2010.</p> <p>14 Q Okay. Looking through this time sheet,<br/>15 sir, I see primarily time of Ms. Englert and Mr. Hoke<br/>16 and your time kind of interspersed.</p> <p>17 Do you as a practice always reflect all of<br/>18 your time spent on a matter or do you on occasion<br/>19 write off some of your time or not mark some of your<br/>20 time to bill a client? And was that the case in this<br/>21 case?</p> <p>22 A Well, sometimes I don't bill my time if I,<br/>23 you know, have a short conversation. But I don't<br/>24 recall that there was anything special about this<br/>25 engagement that would have caused me to write off any</p> | <p style="text-align: right;">Page 24</p> <p>1 A Yes.</p> <p>2 Q Prior to January of 2010 had you done any<br/>3 work or had your firm done any work for Stratus<br/>4 Consulting?</p> <p>5 A I hadn't, and I don't recall anything<br/>6 coming up in our conflict search. When it was<br/>7 originally anticipated that we might represent them,<br/>8 I don't recall anything in conflicts coming up that<br/>9 suggested that we had previously represented Stratus.</p> <p>10 Q Okay. Also a part of this firm -- or I'm<br/>11 sorry, a part of this engagement represented were 47<br/>12 purported citizens of Ecuador. And I will hand to<br/>13 you tab 8 and mark it as Exhibit 4001.</p> <p>14 (Exhibit 4001 marked.)</p> <p>15 MR. BLUME: And, Mr. Gomez, we are<br/>16 e-mailing Exhibit 4001 to you. I will suggest that<br/>17 it is a draft engagement letter dated 26 February<br/>18 2010 which on the top lists a series of names.</p> <p>19 Q (BY MR. BLUME) And, Mr. McDermott, do you<br/>20 recognize this as a draft engagement letter prepared<br/>21 by your firm for this matter?</p> <p>22 A I don't know whether this is a draft or is<br/>23 actually the final.</p> <p>24 Q Okay. And I only say draft because on<br/>25 the -- on pages 5 of 7, 6 of 7, and 7 of 7 there are</p> |
| <p style="text-align: right;">Page 23</p> <p>1 significant amount of time.</p> <p>2 Q Okay. So it's fair to say that most of<br/>3 the efforts of your firm, at least from January to<br/>4 March, would be reflected in the invoice billed to<br/>5 Mr. Donziger in this matter; is that true?</p> <p>6 A Yes.</p> <p>7 Q Okay. Before January of 2010 had your<br/>8 firm represented or otherwise worked with Steven<br/>9 Donziger in the past?</p> <p>10 A I had not and I have no knowledge that<br/>11 our -- anybody at our firm knew Mr. Donziger or had<br/>12 ever worked with him.</p> <p>13 Q Okay. In the address box of your time<br/>14 sheet, sir, there's a company called Stratus<br/>15 Consulting.</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Do you know -- are you familiar with<br/>19 Stratus Consulting?</p> <p>20 A Generally.</p> <p>21 Q All right. And I will suggest to you, and<br/>22 we'll talk more about them later, they're a<br/>23 consulting firm out of Boulder, Colorado.</p> <p>24 Is that consistent with your memory of<br/>25 Stratus Consulting?</p>   | <p style="text-align: right;">Page 25</p> <p>1 signature lines that remain unsigned.</p> <p>2 A Yeah. Yeah, again, I just don't know if<br/>3 this is -- but this is certainly --</p> <p>4 Q This is consistent with the form that the<br/>5 Brownstein firm uses?</p> <p>6 A Yes.</p> <p>7 Q On the top of page 1 of 7, and that's<br/>8 Bates number DONZ 00054374, is a list of names. And<br/>9 I'll simply ask you to look at those names and tell<br/>10 me whether you or your firm prior to February of 2010<br/>11 had ever represented any of those individuals.</p> <p>12 A I don't know, but I would be surprised.</p> <p>13 Q Okay. And do you recall at any point in<br/>14 time up until today, sir, whether you have personally<br/>15 met any of these individuals?</p> <p>16 A I'm quite certain that I have not.</p> <p>17 Q Okay. You mentioned earlier,<br/>18 Mr. McDermott, that there was a time when your firm<br/>19 considered representing not only the Ecuadorian<br/>20 plaintiffs from -- well, let me strike that.</p> <p>21 Do you understand that the names listed<br/>22 here are all plaintiffs in a litigation called the<br/>23 Lago Agria litigation in Ecuador?</p> <p>24 A Yes.</p> <p>25 Q Okay. And I will refer to them</p>   |

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| <p style="text-align: right;">Page 26</p> <p>1 collectively as the LAPs, capital L, capital A,<br/>2 capital P, for Lago Agria plaintiffs, perhaps call<br/>3 them the LAPs. Is that okay?</p> <p>4 A Yes.</p> <p>5 Q Okay. And if at any point in my questions<br/>6 you need to identify any particular person within<br/>7 that group, please let me know.</p> <p>8 You mentioned earlier that you had<br/>9 considered or the firm had considered at one point<br/>10 representing both the LAPs and Stratus Consulting.</p> <p>11 Do you remember that?</p> <p>12 A Yes.</p> <p>13 Q Tell me what you recall about how the<br/>14 discussions of that representation began.</p> <p>15 A I remember Mr. Donziger asking us if we<br/>16 would represent Stratus. And I don't recall, one of<br/>17 two things happened, I believe.</p> <p>18 I believe that we either concluded that we<br/>19 were uncomfortable representing Stratus and the LAPs<br/>20 or Stratus decided that they weren't comfortable<br/>21 having us represent everyone and they retained<br/>22 separate counsel.</p> <p>23 I don't recall which it was, but I believe<br/>24 it was one or the other.</p> <p>25 Q Let me direct your attention -- or let me</p>   | <p style="text-align: right;">Page 28</p> <p>1 A Yeah, it actually does refresh my<br/>2 recollection. And I think that's consistent with --<br/>3 I mean, I think that's what happened.</p> <p>4 Q And when you say that's what happened, if<br/>5 you could tell us why it was that the Brownstein firm<br/>6 did not end up representing Stratus in this matter.</p> <p>7 A I think that Stratus --</p> <p>8 MR. GOMEZ: Objection.</p> <p>9 THE SPECIAL MASTER: Overruled.</p> <p>10 Q (BY MR. BLUME) You may answer.</p> <p>11 A I believe that Stratus decided that it<br/>12 wanted -- it did not want us to represent it.</p> <p>13 Q Okay. Let me ask you this. The e-mails<br/>14 that I -- this e-mail, for example, which was sent to<br/>15 Mr. Treece and to you, is it the ordinary course of<br/>16 the law firm's business to receive e-mails like this<br/>17 about matters in which it's engaged?</p> <p>18 A Yes.</p> <p>19 Q And is it -- and are e-mails such as this<br/>20 received in the ordinary course of the business of<br/>21 representing clients?</p> <p>22 A Yes.</p> <p>23 Q And does this document 4002 reflect such<br/>24 an e-mail?</p> <p>25 A Yes.</p>  |
| <p style="text-align: right;">Page 27</p> <p>1 mark tab 7 as Exhibit 4002.<br/>2 (Exhibit 4002 marked.)</p> <p>3 Q (BY MR. BLUME) And I'm placing before you<br/>4 what has been marked as Exhibit 4002, which on the<br/>5 top is an e-mail dated 18 June 2010 from<br/>6 jayhorowitz@hflit.com to Mr. Lawrence Treece copying<br/>7 you and Tim Beyer.</p> <p>8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And we'll get into this e-mail in more<br/>11 detail later, but let me direct your attention -- and<br/>12 feel free to read through it. Let me direct your<br/>13 attention to the bottom of the first page which is<br/>14 Bates No. DONZ 00057507 and ask you, is this -- do<br/>15 you recognize this e-mail as an e-mail the bottom<br/>16 part of which was written by Mr. Treece to Jay<br/>17 Horowitz sometime in June of 2010?</p> <p>18 A Well, I don't -- I don't recall this<br/>19 e-mail, although I don't have any reason to believe<br/>20 it's not what it appears to be.</p> <p>21 Q Okay. And just, if you could read the<br/>22 last paragraph on that first page and tell me whether<br/>23 that refreshes your recollection about why it was<br/>24 that the Brownstein firm opted not to represent the<br/>25 Stratus company at the time.</p> | <p style="text-align: right;">Page 29</p> <p>1 Q At some point in time there was a<br/>2 discussion about who would sign Brownstein's<br/>3 engagement letter on behalf of the LAPs.</p> <p>4 Do you recall that discussion?</p> <p>5 A I very generally describe -- I very<br/>6 generally recall a discussion within the firm, I<br/>7 believe, as to how we would go about getting<br/>8 authorized to represent the plaintiffs. But I'm<br/>9 sorry, I don't recall with any specificity.</p> <p>10 Q Okay. Let me direct your attention to<br/>11 document 4001 again in front of you, that's your<br/>12 engagement letter. On page 5 of 7 -- I'm sorry, 6 of<br/>13 7 and 7 of 7, that's DONZ 00054374 and 54374.</p> <p>14 Well, that's interesting. There's two<br/>15 identical Bates numbers but different page numbers.<br/>16 In fact -- all right. I see, the whole document is<br/>17 54374 with different pages.</p> <p>18 So page 6 of 7 reflects a signature line<br/>19 for a gentleman named Pablo Fajardo on behalf of a<br/>20 series of names.</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q Do you know who Pablo Fajardo is?</p> <p>24 A No.</p> <p>25 Q On page 7 of 7 there's a signature line</p> |

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| <p style="text-align: right;">Page 30</p> <p>1 for Luis Yanza on behalf of another series of names.<br/>     2 Do you see that?<br/>     3 A Yes.<br/>     4 Q And do you know who Luis Yanza is?<br/>     5 A No.<br/>     6 Q By that answer, can I assume, sir, that<br/>     7 you've never spoken or corresponded directly with<br/>     8 Pablo Fajardo?<br/>     9 A I have no recollection of that.<br/>     10 Q And by that, can I also assume that you at<br/>     11 least have no recollection of speaking directly or<br/>     12 corresponding with Luis Yanza?<br/>     13 A Yes.<br/>     14 Q Sitting here today, do you have any idea<br/>     15 what role they play in any related litigation,<br/>     16 including the Lago Agria litigation?<br/>     17 A No.<br/>     18 Q And you can keep 4001 in front of you.<br/>     19 Who was responsible -- who did you understand to be<br/>     20 responsible for paying the law firm's fees in this<br/>     21 matter?<br/>     22 A Mr. Donziger.<br/>     23 Q And, in fact, was Mr. Donziger your<br/>     24 primary point of contact for your clients or with<br/>     25 your clients?</p>  | <p style="text-align: right;">Page 32</p> <p>1 that is or was a discovery proceeding for the<br/>     2 collection of certain information in the United<br/>     3 States for proceedings outside the United States; is<br/>     4 that correct?<br/>     5 A Yes.<br/>     6 Q Okay. And directing your attention to the<br/>     7 second paragraph in your engagement letter where you<br/>     8 say that your role was, quote, to develop and<br/>     9 implement strategy and to defend and manage the<br/>     10 Colorado matter.<br/>     11 Do you see that?<br/>     12 A Yes.<br/>     13 Q And the Colorado matter, sir, is the 1782<br/>     14 petition matter; is that correct?<br/>     15 A Yes, that's a defined term in the<br/>     16 preceding paragraph.<br/>     17 Q All right. And that's -- all right.<br/>     18 And when it says in the next sentence, We<br/>     19 will take direction from you on their behalf and<br/>     20 expect that you will keep the clients informed about<br/>     21 the Colorado matter, you is Steven Donziger; is that<br/>     22 correct?<br/>     23 A Correct.<br/>     24 Q And the clients are the 47 individuals,<br/>     25 the LAPs?</p>                          |
| <p style="text-align: right;">Page 31</p> <p>1 A I believe the exclusive point of contact.<br/>     2 You know, that's not true. There was -- I believe<br/>     3 there was a lawyer in New York who was representing<br/>     4 Mr. Donziger's clients in a case on the East Coast or<br/>     5 maybe even some arbitration-type proceeding in Europe<br/>     6 who I recall speaking with on one or two occasions.<br/>     7 Q And let me ask you, sir, do you recognize<br/>     8 the name Eric Bloom from Winston &amp; Strawn?<br/>     9 A I faintly recall that name.<br/>     10 Q Okay. And by an arbitration-type<br/>     11 proceeding, are you familiar with the bilateral<br/>     12 investment treaty arbitration, the BIT proceeding<br/>     13 that was going on in and around this time of January<br/>     14 2010?<br/>     15 A Only familiar to the extent it came up in<br/>     16 this -- I recall now that we talked about it.<br/>     17 Q Okay.<br/>     18 A But I don't -- I wasn't involved in it, as<br/>     19 I recall.<br/>     20 Q With regard to direction about your<br/>     21 activity -- well, did you understand you and your<br/>     22 firm were being hired to represent these individuals<br/>     23 in a proceeding under 28 U.S.C. 1782, Section 1782?<br/>     24 A Yes.<br/>     25 Q And you understand that was a discovery,</p> | <p style="text-align: right;">Page 33</p> <p>1 A Yes.<br/>     2 Q And then it goes on to say, Moreover, it<br/>     3 is our understanding that the Donziger firm will pay<br/>     4 all costs and fees as discussed further below billed<br/>     5 by my firm related to the Colorado matter.<br/>     6 Was that, in fact -- you mentioned this<br/>     7 other lawyer. Was it, in fact, your understanding<br/>     8 that Donziger and Donziger's firm would exclusively<br/>     9 pay all costs and fees?<br/>     10 A Yes.<br/>     11 Q And was it your understanding that with<br/>     12 regard to how you would conduct yourself in the 1782<br/>     13 and the information needed, that would come<br/>     14 exclusively from Mr. Donziger?<br/>     15 A Yes.<br/>     16 Q Did you have occasion, sir, at all or do<br/>     17 you know a gentleman by the name of Andrew Woods; is<br/>     18 that name familiar?<br/>     19 A It's not.<br/>     20 Q Okay. What about Laura Garr?<br/>     21 A I have no recollection of that name.<br/>     22 Q Aaron Page?<br/>     23 A Same answer.<br/>     24 Q Okay. When you were first engaged in this<br/>     25 matter, Mr. McDermott, do you recall receiving</p> |

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| <p style="text-align: right;">Page 34</p> <p>1 information, background information from Mr. Donziger<br/>2 or an associate of Mr. Donziger?</p> <p>3 A Yes.</p> <p>4 Q And let me direct your attention to tab<br/>5 22, please. And it's -- 22-A is the cover e-mail and<br/>6 22-B is the attachment. I will identify them as<br/>7 4003-A and 4003-B.</p> <p>8 (Exhibits 4003-A and 4003-B marked.)</p> <p>9 MR. BLUME: And, Mr. Gomez, I will suggest<br/>10 4003-A is an e-mail dated 19 January 2010 from Steven<br/>11 Donziger to John McDermott and 4003-B is a petition,<br/>12 a complaint -- I'm sorry, a complaint to stay<br/>13 arbitration with a file stamp from the Southern<br/>14 District of New York dated 14 January 2010.</p> <p>15 MR. GOMEZ: Thank you.</p> <p>16 Q (BY MR. BLUME) Mr. McDermott, do you see<br/>17 4003-A and do you recognize that as I've identified<br/>18 it, an e-mail to you from Mr. Donziger dated 19<br/>19 January 2010?</p> <p>20 A Yeah, I don't have any recollection of<br/>21 this. I don't have any doubt that it is what it<br/>22 appears to be.</p> <p>23 Q Okay. Whether you have recollection of<br/>24 this specific e-mail, do you recall receiving this<br/>25 petition or this complaint from the Southern District</p>   | <p style="text-align: right;">Page 36</p> <p>1 describing those litigations?</p> <p>2 THE DEPONENT: Can I answer that?</p> <p>3 MR. TREECE: Yes.</p> <p>4 A Well, I mean, I remember, my recollection<br/>5 of Mr. Donziger is that -- of the discussions is --<br/>6 you know, he talked about the litigation in Ecuador,<br/>7 as you would expect, as an advocate. He felt very<br/>8 strongly that Chevron had acted improperly.</p> <p>9 And he characterized -- I would say the<br/>10 theme of what he told me was they're losing there and<br/>11 so they're going to try to pursue litigation in other<br/>12 forums as a prophylactic of what was happening in<br/>13 Ecuador.</p> <p>14 Q Okay. And by there, you mean Ecuador?</p> <p>15 A Yes.</p> <p>16 Q Do you recall whether Mr. Donziger<br/>17 described for you in any more detail about the<br/>18 components of the Lago Agria litigation?</p> <p>19 And I can be more specific. Do you recall<br/>20 him mentioning a gentleman by the name of Richard<br/>21 Cabrera?</p> <p>22 A Yes.</p> <p>23 Q And do you recall what he said to you<br/>24 about Mr. Cabrera?</p> <p>25 MR. GOMEZ: Objection. Privileged.</p>   |
| <p style="text-align: right;">Page 35</p> <p>1 of New York to stay the BIT arbitration and -- well,<br/>2 do you recall receiving it specifically?</p> <p>3 A After reading the first numbered paragraph<br/>4 on page 3, it actually does refresh my recollection<br/>5 of receiving this from somebody at sometime.</p> <p>6 Q Okay. And 4003-A the e-mail says, the<br/>7 last sentence from Mr. Donziger, quote, the petition<br/>8 contains a pretty good fact section on the history of<br/>9 the case and what happened in Ecuador.</p> <p>10 Prior to January 19th, 2010, did you have<br/>11 any background information, whatsoever, about the<br/>12 Ecuadorian litigation involving individual plaintiffs<br/>13 and Chevron?</p> <p>14 A I have a general recollection of the first<br/>15 time I spoke with Mr. Donziger, first or second time,<br/>16 and I don't recall when that was.</p> <p>17 I have a general recollection that he<br/>18 spent some time talking to me about what was going<br/>19 on.</p> <p>20 Q And by what was going on, do you mean to<br/>21 say in the Ecuadorian litigation or in the litigation<br/>22 going on in the Southern District of New York?</p> <p>23 A Both.</p> <p>24 Q Okay. Do you have a recollection today<br/>25 even generally of the types of things he told you in</p> | <p style="text-align: right;">Page 37</p> <p>1 THE SPECIAL MASTER: Overruled.</p> <p>2 A As I sit here today, all I can recall<br/>3 is -- I mean, I know there was extensive discussion<br/>4 about Mr. Cabrera. But as I sit here today, all I<br/>5 recall him saying is that Mr. Cabrera was either a<br/>6 court appointed expert or maybe an expert for the<br/>7 plaintiffs and that Cabrera was doing some, writing<br/>8 some report on the Court's behalf or somebody's<br/>9 behalf. But I recall that Cabrera was a focus of our<br/>10 discussions.</p> <p>11 Q (BY MR. BLUME) Let me direct your<br/>12 attention in Exhibit 4003-B to page 14 of 22,<br/>13 paragraph 29 and ask you if you would just take a<br/>14 moment to peruse paragraphs 29, 30, and 31.</p> <p>15 A Through 31?</p> <p>16 Q Yes, sir.</p> <p>17 A I've reviewed those three paragraphs.</p> <p>18 Q These are three paragraphs from the<br/>19 documents sent to you, that is the complaint to stay<br/>20 the arbitration.</p> <p>21 Do reading those three paragraphs refresh<br/>22 your recollection more specifically about the things<br/>23 Mr. Donziger was telling you about Richard Cabrera?</p> <p>24 A Yes.</p> <p>25 Q And let me ask you this, are these three</p> |

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| <p style="text-align: right;">Page 38</p> <p>1 paragraphs consistent with what Mr. Donziger told you<br/>2 about Mr. Cabrera in January of 2010?</p> <p>3 A Well, generally speaking. I don't<br/>4 recall --</p> <p>5 MR. BLUME: I'm sorry?</p> <p>6 THE SPECIAL MASTER: Mr. Gomez.</p> <p>7 MR. GOMEZ: Privilege.</p> <p>8 THE SPECIAL MASTER: Why don't we ask the<br/>9 witness to leave the room.</p> <p>10 (The deponent left the room.)</p> <p>11 MR. TREECE: He's gone, Your Honor.</p> <p>12 THE SPECIAL MASTER: Okay. Mr. Gomez,<br/>13 what privilege are you asserting? And I'm raising it<br/>14 now because I'm going to make some comment that I<br/>15 hope will avoid an awful lot more privilege rulings<br/>16 because my comments are going to apply to a great<br/>17 deal of what goes on here today.</p> <p>18 So what privilege are you asserting?</p> <p>19 MR. GOMEZ: Understood. I'm asserting the<br/>20 privilege of my client based on the witness'<br/>21 testimony Mr. Donziger was acting on behalf of the<br/>22 Lago Agria plaintiffs, including my clients Hugo and<br/>23 Javier.</p> <p>24 The question goes to communication between<br/>25 Mr. Donziger and the witness. It is attorney-client</p>   | <p style="text-align: right;">Page 40</p> <p>1 prepared to accept the ruling on the grounds of<br/>2 waiver, I do not need to reach, and as I told you<br/>3 before, I try very hard not to reach the subject of<br/>4 crime fraud. And I successfully did that throughout<br/>5 the 1782 and I have successfully so far done it in<br/>6 this case. But if you want me to reach it, I will.<br/>7 But if you don't want me to reach it, then please<br/>8 accept my threshold ruling for why the privilege<br/>9 neither this -- neither the attorney-client<br/>10 privilege, nor the work-product privilege apply.</p> <p>11 MR. GOMEZ: Thank you, Mr. Gitter. My<br/>12 position is that while I reserve the right to appeal<br/>13 your ruling, I understand it, and I do not believe<br/>14 that there is a need to reach the crime fraud.</p> <p>15 THE SPECIAL MASTER: Well, I'm going to<br/>16 instruct the witness to answer the question.</p> <p>17 MR. GOMEZ: I understand.</p> <p>18 THE SPECIAL MASTER: And I actually have a<br/>19 problem with your reserving here. If this were a<br/>20 witness in New York and readily subject to the<br/>21 jurisdiction of the court, I would -- you know, I<br/>22 would go along with you.</p> <p>23 But we have here a witness who was hard to<br/>24 schedule in the first place. He is not subject to<br/>25 the subpoena power of the court. As you well know,</p> |
| <p style="text-align: right;">Page 39</p> <p>1 communication and it's protected.</p> <p>2 THE SPECIAL MASTER: I'm overruling the<br/>3 objection, and I'll explain why first.</p> <p>4 First of all, there was a total waiver, as<br/>5 I think I mentioned to you before. During the<br/>6 deposition of Mr. Donziger in the 1782 action, he<br/>7 testified for literally scores of pages about the<br/>8 proceeding in Colorado, his relationship with the<br/>9 Brownstein firm, and every other aspect of the<br/>10 proceeding in Colorado at tremendous length,<br/>11 literally scores of pages without the slightest<br/>12 objection made on privilege grounds by anybody<br/>13 representing the LAPs.</p> <p>14 The Emery Celli firm was there for some of<br/>15 that testimony and the Motley Rice firm was there for<br/>16 some of that testimony representing the LAPs. And as<br/>17 I say, not one privilege objection was made.</p> <p>18 Now, so that's the waiver. So I am<br/>19 overruling it on grounds of a waiver by dint of the<br/>20 testimony allowed -- subject matter waiver by dint of<br/>21 the testimony allowed to be given without objection<br/>22 for many hours in the 1782.</p> <p>23 Now, I can turn to the subject of the<br/>24 crime fraud exemption, if you want me to, Mr. Gomez.<br/>25 And I'm certainly ready to do so. But if you are</p> | <p style="text-align: right;">Page 41</p> <p>1 the time available for fact discovery is very<br/>2 limited. And I think it extraordinarily unlikely<br/>3 that we'll ever be able to come back to this witness<br/>4 for additional testimony within, you know, the time<br/>5 available.</p> <p>6 So if you don't accept my waiver ruling, I<br/>7 fear I may have to go to the crime fraud exemption.<br/>8 If you like, as I think I've told you -- I know I've<br/>9 told you before, that we can identify for you the<br/>10 pages.</p> <p>11 In fact, we are able because of the magic<br/>12 of electronics to actually send you some of those<br/>13 pages or Mr. Ormand, who has just read this stuff<br/>14 again, can give you a couple of choice examples from<br/>15 the transcript and give you a bunch of page<br/>16 references, whichever you want.</p> <p>17 But I fear, Mr. Gomez, in this instance<br/>18 where we have a none New York witness and where we're<br/>19 so pressed for time in meeting the discovery deadline<br/>20 that I cannot take a chance of, you know, not<br/>21 reaching the crime fraud exception if you're not<br/>22 prepared to accept a waiver.</p> <p>23 MR. GOMEZ: Mr. Gitter, so I understand<br/>24 the situation, are you asking me to waive my client's<br/>25 right to appeal?</p>   |

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| <p style="text-align: right;">Page 42</p> <p>1        THE SPECIAL MASTER: No. If -- no, I'm<br/>     2 not asking you to waive your client's right to<br/>     3 appeal. However, if you are not prepared to accept<br/>     4 the waiver ground, the antecedent waiver ground for<br/>     5 my ruling, I fear I may have to go to the crime fraud<br/>     6 ground as well. And then you can appeal whatever you<br/>     7 like.</p> <p>8        I mean, the witness is going to answer the<br/>     9 question anyway because I can instruct you to<br/>     10 instruct them to answer it. And, indeed, I have<br/>     11 under my power of appointment the right in paragraph<br/>     12 2A to direct witnesses to answer questions for making<br/>     13 rulings on questions of privilege.</p> <p>14        And, furthermore --</p> <p>15        MR. GOMEZ: And I don't --</p> <p>16        THE SPECIAL MASTER: Wait a minute.</p> <p>17        MR. GOMEZ: I'm sorry.</p> <p>18        THE SPECIAL MASTER: Just a minute. And,<br/>     19 furthermore, the Brownstein letter to Judge Kaplan on<br/>     20 Friday, which I reread this morning, states that if<br/>     21 an objection is made on privilege grounds by somebody<br/>     22 representing the LAPs, they will withhold testifying<br/>     23 or whatever until the matter is resolved by the<br/>     24 special master or the Court.</p> <p>25        So once I resolve the matter, then the</p>                              | <p style="text-align: right;">Page 44</p> <p>1 opportunity to then address that ruling during the<br/>     2 briefing anticipated in the future, sure, I have no<br/>     3 problem with that.</p> <p>4        THE SPECIAL MASTER: I think we'll go<br/>     5 ahead on that basis. Let's move on. I think you<br/>     6 will find that the waiver is ample and you will not<br/>     7 need for me to go into the crime fraud exception.</p> <p>8        Okay.</p> <p>9        MR. TREECE: Your Honor, let me --</p> <p>10        THE SPECIAL MASTER: And you should<br/>     11 assume -- you should assume, therefore, that in each<br/>     12 instance, unless I say to the contrary, that in each<br/>     13 instance the bases for my overruling an objection<br/>     14 based on privilege are going to be the waiver I<br/>     15 described and the crime fraud exception, okay?</p> <p>16        MR. GOMEZ: Very well. Mr. Gitter; just<br/>     17 so I don't -- just so I understand about preserving<br/>     18 the record, do you still want to -- should we just<br/>     19 assume that those objections are preserved going<br/>     20 forward with your ruling or do I need to actually say<br/>     21 objection, privilege as we go forward?</p> <p>22        THE SPECIAL MASTER: I think you need to<br/>     23 say objection, privilege as we go forward. You're<br/>     24 not going to get -- that doesn't interrupt very<br/>     25 much --</p> |
| <p style="text-align: right;">Page 43</p> <p>1 testimony will be given.</p> <p>2        MR. GOMEZ: And I understand that and I<br/>     3 understand you have that authority and I understand<br/>     4 that the witness will be instructed to answer and<br/>     5 will give an answer. And I don't have a problem<br/>     6 proceeding that way.</p> <p>7        I simply want to reserve my right, my<br/>     8 client's right to be able to assess the citations<br/>     9 that were put on the record at the beginning of the<br/>     10 deposition and to assess whether that waiver is as<br/>     11 broad and should apply in this case. That requires<br/>     12 some time and legal research. I don't want to delay<br/>     13 the deposition. I would like it to go forward.</p> <p>14        I don't want to give up the opportunity to<br/>     15 review and at a later time if I come to a conclusion<br/>     16 that the waiver does not apply as broadly as it is<br/>     17 going to be applied, I would like an opportunity to<br/>     18 present that for an appeal.</p> <p>19        THE SPECIAL MASTER: Then I need the<br/>     20 following from you. I need a representation that if<br/>     21 you do that, I may -- and if you ask me not to now<br/>     22 rule on the crime fraud exception, that if you take<br/>     23 an appeal, that I may present my ruling on crime<br/>     24 fraud to Judge Kaplan.</p> <p>25        MR. GOMEZ: As long as I have an</p> | <p style="text-align: right;">Page 45</p> <p>1        MR. GOMEZ: Okay, that's fine.</p> <p>2        THE SPECIAL MASTER: -- because it's going<br/>     3 to be overruled. For both of those reasons I don't<br/>     4 think we have to have another conference about it.</p> <p>5        MR. GOMEZ: I think that's right. That's<br/>     6 fine.</p> <p>7        THE SPECIAL MASTER: Unless I come up with<br/>     8 yet another ground or unless another ground presents<br/>     9 itself, more precisely, for my overruling privilege<br/>     10 objection, okay?</p> <p>11        MR. GOMEZ: Understood, yes.</p> <p>12        THE SPECIAL MASTER: Understood? Thank<br/>     13 you, Mr. Gomez.</p> <p>14        MR. BLUME: If I may, Your Honor, just to<br/>     15 be clear, while Your Honor is reserving an<br/>     16 articulation of the rationale of the crime fraud, it<br/>     17 is Your Honor's ruling on these privilege objections<br/>     18 that both waiver and crime fraud apply to overrule<br/>     19 the objection; is that correct?</p> <p>20        THE SPECIAL MASTER: That is -- well, just<br/>     21 a second. Certainly on this one. I mean, this one<br/>     22 is clear as a bell. It applies to this one. The<br/>     23 crime fraud exception, as you know, has two<br/>     24 components.</p> <p>25        The first component is is there a</p>  |

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| <p style="text-align: right;">Page 46</p> <p>1 reasonable ground to believe or suspect that a crime<br/>2 or a fraud has been committed?</p> <p>3 And the second prong is is the specific<br/>4 communication that is the subject of the rule, quote,<br/>5 in furtherance of the fraud?</p> <p>6 So the second prong requires an analysis<br/>7 of a communication by communication or memo by memo,<br/>8 whatever, analysis.</p> <p>9 I guess I have to as a matter of just good<br/>10 procedure and practice utter the words -- utter the<br/>11 two grounds or more precisely, more precisely, I will<br/>12 utter all of them are going to be based on the<br/>13 antecedent ground of waiver, okay?</p> <p>14 MR. BLUME: Understood.</p> <p>15 THE SPECIAL MASTER: Every time I overrule<br/>16 a privilege objection, the first ground is waiver.<br/>17 And if I add crime fraud, then you know that I've<br/>18 determined that the communication is in furtherance<br/>19 of that.</p> <p>20 MR. BLUME: Understood, Your Honor. And<br/>21 with regard to specific objections for work product,<br/>22 I would simply add to that formula an articulation of<br/>23 waiver which doesn't -- or an articulation to<br/>24 overrule that doesn't necessarily have to go even as<br/>25 far as crime fraud, although I think it applies. And</p> | <p style="text-align: right;">Page 48</p> <p>1 THE SPECIAL MASTER: That's not true.<br/>2 That's not true.</p> <p>3 The reason I focused on this one in<br/>4 furtherance of it is clear as a bell on the piece of<br/>5 paper in front of you. That is to say Mr. Donziger<br/>6 was transmitting by e-mail, vouching for the quality<br/>7 of the recitation of the history of the case as set<br/>8 forth in that complaint.</p> <p>9 The history of the case that's set forth<br/>10 in that complaint, including the three paragraphs the<br/>11 witness was just asked to focus on are -- include,<br/>12 you know, some of the major elements of the fraud<br/>13 that Judge Kaplan found as it relates to the 1782<br/>14 proceeding in Colorado.</p> <p>15 For example, the word neutral and<br/>16 independent appears many times in this recitation to<br/>17 describe Mr. Cabrera.</p> <p>18 For example, the best and most recent<br/>19 independent -- quote, I'm quoting now from paragraph<br/>20 29. The best and most recent independent estimate<br/>21 available of the human health impact of this<br/>22 contamination is provided by the neutral special<br/>23 master appointed by the Court to provide advice on<br/>24 damages.</p> <p>25 The special master, Ecuadorian</p>   |
| <p style="text-align: right;">Page 47</p> <p>1 that is simply that because this witness, as Your<br/>2 Honor pointed out, is unavailable at trial, that<br/>3 helps demonstrate the substantial need for the<br/>4 information.</p> <p>5 And the actions of Mr. Donziger are<br/>6 relevant to the issues in dispute. And, therefore,<br/>7 the reliable information that this witness can<br/>8 provide as to Mr. Donziger's conduct as it relates to<br/>9 the causative action brought in the Southern District<br/>10 of New York go directly to this Court's ability to<br/>11 order the disclosure, even mental -- of work product,<br/>12 even mental impression attorney work product.</p> <p>13 So I would add that to kind of the litany<br/>14 of reasons why this testimony should go forward.</p> <p>15 MR. GOMEZ: Mr. Gitter, may I be heard?</p> <p>16 THE SPECIAL MASTER: Wait, you may not<br/>17 need to be heard.</p> <p>18 Go ahead, Mr. Gomez.</p> <p>19 MR. GOMEZ: Well, my understanding of<br/>20 crime fraud that you need to -- you need to assess<br/>21 whether the matter in question is in furtherance.<br/>22 And we don't have an answer from the witness yet so<br/>23 the matter is still unknown.</p> <p>24 THE SPECIAL MASTER: That's not true.</p> <p>25 MR. GOMEZ: My point is --</p>                               | <p style="text-align: right;">Page 49</p> <p>1 environmental engineer and geologist Dr. Richard<br/>2 Cabrera has conducted numerous environmental<br/>3 assessments for oil companies, et cetera, et cetera.<br/>4 And then it goes on and on and on to make statements<br/>5 that Judge Kaplan has already found to be fraudulent.<br/>6 And so of necessity, this communication<br/>7 urging upon -- by Mr. Donziger urging upon<br/>8 Mr. McDermott a view of what Mr. Cabrera did and who<br/>9 he was is in furtherance of the fraud because the<br/>10 idea -- the particulars of the fraud in Colorado<br/>11 were, as Judge Kaplan found, a scheme to hide from<br/>12 the Court the actual work or non work of Dr. Cabrera.</p> <p>13 So the answer is certainly as to this<br/>14 communication it needs the second prong, namely in<br/>15 furtherance of prong. And any testimony related to<br/>16 this is going to do the same.</p> <p>17 Now, anything more, Mr. Gomez? Because I<br/>18 want to say something in response to what Mr. Blume<br/>19 said.</p> <p>20 MR. GOMEZ: No, Mr. Gitter.</p> <p>21 THE SPECIAL MASTER: Okay. Mr. Blume, I<br/>22 accept your statement of need. I am extremely<br/>23 skeptical about the rest of what you said and I am<br/>24 not prepared to accept that as a ground for<br/>25 overruling privilege. And it certainly doesn't --</p> |

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| <p style="text-align: right;">Page 50</p> <p>1 you know, I'm certainly not prepared to accept it as<br/>2 an integral part of any ruling I make overruling a<br/>3 privilege objection.<br/>4 MR. BLUME: Very well.<br/>5 THE SPECIAL MASTER: I think the record is<br/>6 now fairly lucid on this whole subject and we can<br/>7 move on.<br/>8 Does that meet with your approval,<br/>9 Mr. Gomez, to move on?<br/>10 MR. GOMEZ: Yes, let's move on.<br/>11 MR. TREECE: Your Honor, let me go get<br/>12 Mr. McDermott, who stepped out.<br/>13 THE SPECIAL MASTER: Great.<br/>14 MR. TREECE: And I would ask for the<br/>15 record that you specifically instruct him to answer<br/>16 the question pending.<br/>17 THE SPECIAL MASTER: That was my<br/>18 intention.<br/>19 MR. TREECE: And then it's up to you, Your<br/>20 Honor, but to avoid you having to say -- instruct the<br/>21 witness to answer the question every time you<br/>22 overrule an objection, we're willing to understand<br/>23 that if you overrule the objection, the witness is<br/>24 instructed to answer without a specific<br/>25 instruction --</p> | <p style="text-align: right;">Page 52</p> <p>1 THE SPECIAL MASTER: That's the problem<br/>2 with these LiveNotes. I think there is.<br/>3 MR. TREECE: I think there is, too, Your<br/>4 Honor.<br/>5 THE SPECIAL MASTER: I think the objection<br/>6 was made before the witness answered whatever the<br/>7 question was. She'll have just as much trouble<br/>8 finding it as we will.<br/>9 MR. BLUME: Well, with Your Honor's<br/>10 permission, rather than try to search and take time<br/>11 through the transcript if I can simply withdraw<br/>12 whatever pending question and reask it in a similar<br/>13 way.<br/>14 THE SPECIAL MASTER: Reask it, right,<br/>15 please.<br/>16 MR. BLUME: Very well.<br/>17 THE SPECIAL MASTER: Try to make it very<br/>18 similar because it was -- the form was fine before.<br/>19 MR. BLUME: I will try.<br/>20 THE SPECIAL MASTER: Otherwise, Mr. Gomez<br/>21 would have let us know, right, Mr. Gomez?<br/>22 MR. GOMEZ: Yes.<br/>23 Q (BY MR. BLUME) Mr. McDermott, you were<br/>24 looking at paragraphs 29, 30, and 31 of<br/>25 Exhibit 4003-B, I believe; is that correct?</p>                        |
| <p style="text-align: right;">Page 51</p> <p>1 THE SPECIAL MASTER: That's correct.<br/>2 MR. TREECE: -- or you may specifically<br/>3 instruct him, as you choose.<br/>4 THE SPECIAL MASTER: No, I don't think --<br/>5 I think we're all agreed we're going to try to move<br/>6 this along and do it the way you've just described.<br/>7 MR. TREECE: Thank you, Your Honor.<br/>8 THE SPECIAL MASTER: Mr. Gomez, are you<br/>9 comfortable with that?<br/>10 MR. GOMEZ: I am comfortable with that,<br/>11 yes.<br/>12 THE SPECIAL MASTER: Thank you.<br/>13 If I utter the words crime fraud, folks,<br/>14 it means I am again finding both prongs of the crime<br/>15 fraud exception, as well as the waiver, okay?<br/>16 MR. BLUME: Very well.<br/>17 THE SPECIAL MASTER: Okay. Bring in the<br/>18 witness.<br/>19 (The deponent entered the room.)<br/>20 MR. TREECE: He is here, Your Honor, as<br/>21 you can see.<br/>22 THE SPECIAL MASTER: Is there a pending<br/>23 question?<br/>24 MR. BLUME: I'm trying to locate that,<br/>25 Your Honor.</p>  | <p style="text-align: right;">Page 53</p> <p>1 A Yes.<br/>2 Q And I believe my question was are the<br/>3 facts set forth in paragraphs 29, 30, and 31<br/>4 consistent with what Mr. Donziger told you about the<br/>5 role of Mr. Cabrera in the Lago Agria litigation?<br/>6 A Yes, the exception being things like 14<br/>7 technical officials, some of the nuances I don't<br/>8 recall. But generally speaking, yes.<br/>9 Q Do you recall whether Mr. Donziger told<br/>10 you any fact which you believed at the time to be<br/>11 directly inconsistent with anything set forth in<br/>12 paragraphs 29, 30, and 31?<br/>13 MR. GOMEZ: Objection. Privilege.<br/>14 THE SPECIAL MASTER: Overruled. Waiver,<br/>15 crime fraud, two crime fraud, the Cabrera fraud and<br/>16 the Colorado 1782 fraud.<br/>17 A I -- if I understand correctly, did<br/>18 Mr. Donziger tell me --<br/>19 THE SPECIAL MASTER: And this is part of<br/>20 the prior communication that I found to meet the<br/>21 furtherance prong.<br/>22 Go ahead.<br/>23 A I had --<br/>24 THE DEPONENT: I'm sorry, Your Honor.<br/>25 A I don't recall Mr. Donziger telling me</p> |

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| <p style="text-align: right;">Page 54</p> <p>1 anything that is inconsistent with what's alleged in<br/>2 29 through 31.</p> <p>3 Q (BY MR. BLUME) In and around January<br/>4 2010, Mr. McDermott, were you aware of Chevron's<br/>5 allegations that Stratus Consulting had improperly<br/>6 ghostwritten substantial portions of the Cabrera<br/>7 report in Ecuador?</p> <p>8 A I think so, but I'm not sure. I just<br/>9 don't -- I just don't remember. I mean, I -- I just<br/>10 don't -- I think so.</p> <p>11 Q Okay.</p> <p>12 A But I'm not certain.</p> <p>13 Q And let me direct your attention, sir, to<br/>14 tab 59, which will be Exhibit 4004-A, which is<br/>15 WOODS-HDD-0216302, and 4004-B, which is<br/>16 WOODS-HDD-0216303 through 327.</p> <p>17 (Exhibits 4004-A and 4004-B marked.)</p> <p>18 MR. BLUME: And, Mr. Teece, I'm going to<br/>19 give you my copy.</p> <p>20 THE SPECIAL MASTER: While we're doing<br/>21 this -- while we're doing this, Mr. Gomez, I just<br/>22 wanted to say something very quickly.</p> <p>23 The references that were sent to you by<br/>24 Mr. Ormand I think on Sunday night, or whenever he<br/>25 sent them to you, are only a tiny portion of the</p> | <p style="text-align: right;">Page 56</p> <p>1 Q If you could peruse that paragraph kind of<br/>2 into the next page 8 to yourself.</p> <p>3 A All right, I have read that paragraph.</p> <p>4 Q And does that refresh your recollection,<br/>5 sir, as to whether or not in and around January 2010<br/>6 you were aware of Chevron's allegations of<br/>7 ghostwriting of the Cabrera report --</p> <p>8 A Yes.</p> <p>9 Q -- in Ecuador?</p> <p>10 And do you recall during the conversation<br/>11 you had with Mr. Donziger about the background of the<br/>12 Lago Agria litigation whether or not he told you that<br/>13 Stratus had, in fact, improperly ghostwritten<br/>14 substantial portions of the Cabrera report?</p> <p>15 MR. GOMEZ: Objection. Privilege.</p> <p>16 THE SPECIAL MASTER: Overruled. And I<br/>17 will wait to hear the answer before I state whether<br/>18 this is also a communication that meets both prongs<br/>19 of the crime fraud exception.</p> <p>20 Go ahead, please answer the question.</p> <p>21 A I don't recall that Mr. Donziger told me<br/>22 that.</p> <p>23 Q (BY MR. BLUME) Well, just to put that in<br/>24 context, is that a fact, sir, that you ultimately<br/>25 learned come March of 2010 through other means that</p>              |
| <p style="text-align: right;">Page 55</p> <p>1 references that we have, and we will send you a great<br/>2 many more, okay?</p> <p>3 MR. GOMEZ: Thank you.</p> <p>4 THE SPECIAL MASTER: Thank you.</p> <p>5 MR. GOMEZ: Yes, thank you.</p> <p>6 Q (BY MR. BLUME) Mr. McDermott, do you<br/>7 recognize this e-mail as an e-mail dated<br/>8 January 19th, 2010 from a gentleman by the name of<br/>9 Andrew Woods to you with a copy to Steven Donziger?</p> <p>10 A Yes. Again, I don't recall specifically<br/>11 getting this, but I'm sure I did.</p> <p>12 Q And attached to it as is reflected in the<br/>13 e-mail is Chevron's 1782 petition that was filed in<br/>14 the District of Colorado.</p> <p>15 Do you see that?</p> <p>16 A Yes.</p> <p>17 Q If I could direct your attention -- do you<br/>18 recall or do you have some recollection of receiving<br/>19 and reviewing that attachment as well?</p> <p>20 A A general recollection.</p> <p>21 Q Okay. If I could direct your attention to<br/>22 the bottom of page 7 of the 2004(sic)-B, which is the<br/>23 petition itself, it's the paragraph I believe that<br/>24 begins, Despite?</p> <p>25 A Yes.</p>   | <p style="text-align: right;">Page 57</p> <p>1 we'll talk about?</p> <p>2 MR. GOMEZ: Objection to the extent that<br/>3 the witness' knowledge would be derived from<br/>4 attorney-client communication, privilege.</p> <p>5 A The answer to that --</p> <p>6 THE SPECIAL MASTER: Overruled.</p> <p>7 A The answer to that question is no. I<br/>8 don't believe -- I mean, I guess another way to say<br/>9 that is that why we withdrew from the case.</p> <p>10 I mean, I don't recall that we ever were<br/>11 told that Stratus ghostwrote a portion of the Cabrera<br/>12 report. I could be mistaken, but I don't recall.</p> <p>13 That's not why -- that's not why we withdrew.</p> <p>14 Q (BY MR. BLUME) Okay. And we'll get to<br/>15 that. But suffice to say based on your answer,<br/>16 certainly in January 2010 you had no reason to<br/>17 believe based on your conversations with Mr. Donziger<br/>18 that Stratus had improperly ghostwritten substantial<br/>19 portions of the Cabrera report; is that true?</p> <p>20 A That's absolutely true.</p> <p>21 MR. GOMEZ: Objection. Privilege.</p> <p>22 THE SPECIAL MASTER: Overruled.</p> <p>23 Q (BY MR. BLUME) Is it fair to say,<br/>24 Mr. McDermott, that Mr. --</p> <p>25 THE SPECIAL MASTER: And crime fraud --</p> |

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| <p style="text-align: right;">Page 58</p> <p>1 and crime fraud on the last one, same set of<br/>2 communications with Donziger.<br/>3 Q (BY MR. BLUME) Is it fair to say,<br/>4 Mr. McDermott, that Mr. Donziger set the general<br/>5 strategy on how your firm would go about opposing<br/>6 Chevron's effort in the 1782 petition?<br/>7 MR. GOMEZ: Objection. Privilege.<br/>8 A I'm not sure --<br/>9 THE SPECIAL MASTER: Overruled.<br/>10 A I'm not sure I understand that question.<br/>11 Q (BY MR. BLUME) Did you consult -- or<br/>12 how -- withdraw that.<br/>13 Did you consult with Mr. Donziger on the<br/>14 strategy for opposing Chevron's 1782 petition?<br/>15 A Yes.<br/>16 Q What role, if any, did Stratus' lawyers<br/>17 play in setting that strategy?<br/>18 MR. GOMEZ: Objection. Privilege.<br/>19 A My rec --<br/>20 MR. TREECE: Don't --<br/>21 THE SPECIAL MASTER: Wait, wait, wait.<br/>22 THE DEPONENT: Sorry.<br/>23 THE SPECIAL MASTER: What's the privilege?<br/>24 MR. GOMEZ: Attorney work product.<br/>25 THE SPECIAL MASTER: What is it?</p>  | <p style="text-align: right;">Page 60</p> <p>1 Shinder?<br/>2 A Yes, that name is very familiar.<br/>3 Q Okay. Did you understand through your<br/>4 conversations with Mr. Donziger about the strategy in<br/>5 opposing Chevron's 1782 petition that Mr. Donziger<br/>6 was seeking to delay that action?<br/>7 MR. GOMEZ: Objection. Privilege.<br/>8 THE SPECIAL MASTER: Overruled. Crime<br/>9 fraud, two.<br/>10 A Actually, my recollection is that he<br/>11 wanted them to prevent them from taking place. Maybe<br/>12 it was just delayed, but my recollection is he did<br/>13 not want the depositions to go forward.<br/>14 Q (BY MR. BLUME) And you disagreed with<br/>15 that, did you not?<br/>16 THE SPECIAL MASTER: Double crime fraud<br/>17 exception.<br/>18 Q (BY MR. BLUME) And you disagreed with<br/>19 that approach?<br/>20 A I don't remember. I remember disagreeing<br/>21 with -- I remember not getting a lot of the<br/>22 information we felt we needed to make representations<br/>23 to the Court. I may -- I may have. I just don't<br/>24 remember.<br/>25 Q Sure.</p>                                       |
| <p style="text-align: right;">Page 59</p> <p>1 MR. GOMEZ: Attorney work product,<br/>2 Mr. Gitter, the role played by counsel to the extent<br/>3 it would reveal attorney work product.<br/>4 THE SPECIAL MASTER: The role played by<br/>5 Stratus counsel is what he was asking.<br/>6 MR. GOMEZ: Yes.<br/>7 THE SPECIAL MASTER: Stratus has waived,<br/>8 specifically no work product applies. So in addition<br/>9 to the other waivers, I rule on that basis as well.<br/>10 And there was no common interest as I have<br/>11 ruled in the Beier deposition which they have<br/>12 accepted and not appealed, and indeed that ruling is<br/>13 the law of the case.<br/>14 MR. BLUME: May the witness answer, Your<br/>15 Honor?<br/>16 THE SPECIAL MASTER: Yes.<br/>17 A I don't recall that Stratus' counsel<br/>18 played any role in the strategy. I don't even<br/>19 recall -- I don't recall ever talking to a lawyer<br/>20 from Stratus. I may very well have, but I don't<br/>21 recall.<br/>22 Q (BY MR. BLUME) Do you remember speaking<br/>23 to a gentleman by the name of Mr. Shinder?<br/>24 A That name is very familiar.<br/>25 Q Okay. And we'll get back to him. Jeffrey</p> | <p style="text-align: right;">Page 61</p> <p>1 MR. BLUME: If I could have tab 41,<br/>2 please. And this will be marked as Exhibit 4005.<br/>3 (Exhibit 4005 marked.)<br/>4 MR. BLUME: Mr. Gomez, this is an e-mail<br/>5 chain ending on 17 February 2010 from Mr. McDermott<br/>6 to Mr. Donziger and Ericka Englert beginning with an<br/>7 e-mail from Mr. Donziger to Mr. McDermott and<br/>8 Ms. Englert on 16 February 2010.<br/>9 THE SPECIAL MASTER: Will you give me a<br/>10 chance to read this, please?<br/>11 MR. BLUME: Sure.<br/>12 (Pause.)<br/>13 MR. BLUME: May I proceed, Your Honor?<br/>14 THE SPECIAL MASTER: I've finished. Go<br/>15 ahead, Mr. Blume, I've finished.<br/>16 Q (BY MR. BLUME) Okay. The bottom, the<br/>17 first e-mail from Mr. Donziger to you, sir, of 16<br/>18 February reflects discussions about terms reflected<br/>19 in your engagement letter; is that correct?<br/>20 A Yes.<br/>21 Q And let me, just curiously, on the bottom<br/>22 of that first page 4005 referencing page 2, third<br/>23 paragraph, third sentence of your engagement letter,<br/>24 do you see that?<br/>25 A Yes.</p> |

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| <p style="text-align: right;">Page 62</p> <p>1 Q And it talks about a request that<br/>2 Brownstein -- that it says, quote, Although bills<br/>3 will be based on the time actually incurred, they<br/>4 will be subject to adjustment by our firm based on<br/>5 relevant factors.<br/>6 Do you see that?<br/>7 A Yes.<br/>8 Q And Mr. Donziger replied to that<br/>9 complaining or commenting that it provided the firm<br/>10 with discretion. And he recommended, did he not,<br/>11 that either take it out or subject -- make it subject<br/>12 to Donziger's approval.<br/>13 Do you recall that?<br/>14 A Yes.<br/>15 Q Do you recall having any discussion other<br/>16 than what is revealed in this e-mail about Donziger's<br/>17 request to approve any -- any -- approve any of that<br/>18 discretion on the relevant factors?<br/>19 A No, Mr. Donziger had the same reaction<br/>20 that 99 percent of my clients do when I send them<br/>21 that provision.<br/>22 Q And you opted, as in all caps, just simply<br/>23 take it out?<br/>24 A Yeah. I usually take it out now before I<br/>25 even send it to clients.</p>   | <p style="text-align: right;">Page 64</p> <p>1 at all. B, it's been waived both by Donziger and by<br/>2 the testimony that I referred to earlier.<br/>3 Go ahead, Mr. Blume, and the witness. I<br/>4 would like to hear the answer to this question.<br/>5 A My recollection is that Mr. Donziger had<br/>6 repeatedly told us that he would be providing us<br/>7 material, factual material and legal arguments from<br/>8 folks in Ecuador that we could then use in whatever<br/>9 we filed before Judge Kane. And we didn't get it.<br/>10 And we kept having discussions about, we need that<br/>11 information, we need that information. And we didn't<br/>12 get it.<br/>13 And I think the sense that I had was the<br/>14 argument that he thought might be persuasive to Judge<br/>15 Kane was, as I say in this e-mail, it's just -- it's<br/>16 Chevron's fault.<br/>17 And Judge Kane is a wonderful judge, and<br/>18 he's an old war horse. And he was going to focus on<br/>19 relevant, factual and legal arguments. And we<br/>20 weren't getting that information -- I didn't feel<br/>21 like we were getting that information from<br/>22 Mr. Donziger.<br/>23 Q (BY MR. BLUME) And just for the record,<br/>24 this, like the other, this e-mail is of the type<br/>25 that's kept in the ordinary course of the business of</p> |
| <p style="text-align: right;">Page 63</p> <p>1 Q More related to what we were just talking<br/>2 about, the top part is your response to Mr. Donziger,<br/>3 referencing your thoughts on the engagement letter,<br/>4 but then noting, quote, On a related point, my view<br/>5 on the delay issue does differ from yours, albeit<br/>6 respectfully so.<br/>7 In reading that paragraph, does that<br/>8 refresh your recollection as to whether your strategy<br/>9 for proceeding in front of Judge Kane in Colorado<br/>10 differed from the strategy that Mr. Donziger was<br/>11 promoting in proceeding with the 1782?<br/>12 A What I'm struggling with is your use of<br/>13 the term strategy. I mean, my concern -- one of my<br/>14 concerns was that --<br/>15 MR. GOMEZ: I'm sorry, I'm sorry. This is<br/>16 Mr. Gomez. My phone was on mute. I meant to object<br/>17 on privilege and work product grounds.<br/>18 THE SPECIAL MASTER: This is -- there is<br/>19 no privilege here. This was waived by Donziger in<br/>20 this production. And for the reasons that I've said<br/>21 before, the -- this is -- this is basically a fee<br/>22 negotiation letter.<br/>23 In any event, the specific question I --<br/>24 after I hear the answer, I may add crime fraud.<br/>25 So, A, there is no privilege to this here</p> | <p style="text-align: right;">Page 65</p> <p>1 the Brownstein firm?<br/>2 A Yes.<br/>3 Q And it's the ordinary course of the<br/>4 Brownstein firm to keep such e-mails such as this as<br/>5 they relate to client matters?<br/>6 A Yes.<br/>7 MR. BLUME: If we could get tab 42,<br/>8 please. Label this Exhibit 4006.<br/>9 (Exhibit 4006 marked.)<br/>10 MR. BLUME: Mr. Gomez, this is an e-mail<br/>11 on the top from Mr. McDermott to Mr. Donziger and<br/>12 Ericka Englert, with copy to Michael Hoke dated<br/>13 3 March 2010, responding to an e-mail from<br/>14 Mr. Donziger dated 2 March 2010, responding back to<br/>15 an e-mail dated 2 March 2010 from Ericka Englert to<br/>16 Steven Donziger.<br/>17 Q (BY MR. BLUME) If I could ask you just to<br/>18 review that and first tell me whether this, as well,<br/>19 is an e-mail kept in the ordinary course of the<br/>20 business of the Brownstein firm?<br/>21 A Yes, it is.<br/>22 Q And whether it is in the ordinary course<br/>23 of the Brownstein firm to keep such e-mail related to<br/>24 client matters?<br/>25 A Yes.</p>   |

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| <p style="text-align: right;">Page 66</p> <p>1 Q I direct your attention to the e-mail<br/>2 first from Ericka Englert to Mr. Donziger at the<br/>3 bottom of that chain, asking specifically for an<br/>4 affidavit to support the basis for seeking leave to<br/>5 oppose a petition.</p> <p>6 Is this consistent with your firm's<br/>7 request to Mr. Donziger for information, both factual<br/>8 and legal, to support your position in Colorado?</p> <p>9 A Yes.</p> <p>10 Q And then Mr. Donziger responds, Yes, but,<br/>11 in the middle there, he says, I'm thinking maybe we<br/>12 should wait to file this until we file in Ecuador,<br/>13 which we can do by Monday.</p> <p>14 Do you know, sitting here today, to what<br/>15 he was referring when he mentioned filing in Ecuador?</p> <p>16 A Not as I sit here today.</p> <p>17 Q Okay. You then go on to say that to<br/>18 impress upon Mr. Donziger, quote, We should file<br/>19 today -- this being in the top e-mail.</p> <p>20 Our delay is conveying to the Court and<br/>21 our opponents that we are disorganized and the<br/>22 equities are shifting to Chevron.</p> <p>23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And is that consistent with your testimony</p> | <p style="text-align: right;">Page 68</p> <p>1 MR. BLUME: If we could turn to tab 45,<br/>2 please. And I'll mark this as Exhibit 4007.<br/>3 (Exhibit 4007 marked.)<br/>4 MR. BLUME: It's Bates No.<br/>5 DONZ 00053751.</p> <p>6 Q (BY MR. BLUME) It's a two-page e-mail.<br/>7 First, dated 27 January, first from Michael Hoke to<br/>8 you and Ericka Englert, and then a forwarding of that<br/>9 e-mail from Ericka Englert on the same date to<br/>10 Mr. Donziger.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And is this too an e-mail that's kept in<br/>14 the ordinary course of Brownstein's business?</p> <p>15 A Yes.</p> <p>16 Q And it's the ordinary course to keep such<br/>17 an e-mail?</p> <p>18 A Yes.</p> <p>19 Q Directing your attention to Mr. Hoke's<br/>20 e-mail at 4:01 p.m. on 27 January. Subject being<br/>21 Chevron v. Stratus, issues to discuss with Mr. Bloom,<br/>22 B-l-o-o-m. Do you recall having a discussion with<br/>23 your team about the relevance of the BIT proceeding<br/>24 and questions you had for Eric Bloom at Winston &amp;<br/>25 Strawn?</p>   |
| <p style="text-align: right;">Page 67</p> <p>1 earlier, this is now March of 2010?</p> <p>2 THE SPECIAL MASTER: Objection sustained,<br/>3 argumentative. Speaks for itself.</p> <p>4 MR. BLUME: Okay.</p> <p>5 Q (BY MR. BLUME) Did Mr. Donziger ever tell<br/>6 you why it was that he was -- why he didn't want to<br/>7 move more quickly in the Colorado action, or as you<br/>8 mentioned, move at all?</p> <p>9 MR. GOMEZ: Objection. Privilege.</p> <p>10 THE SPECIAL MASTER: Overruled.</p> <p>11 A I'm sorry, I don't recall.</p> <p>12 Q (BY MR. BLUME) You mentioned earlier,<br/>13 Mr. McDermott, that you had occasion to speak with --<br/>14 you or your team had occasion to speak with a lawyer<br/>15 that had some involvement in an international<br/>16 arbitration, I think you mentioned.</p> <p>17 Do you recall that testimony?</p> <p>18 A Yes.</p> <p>19 Q And I mentioned the name Eric Bloom from<br/>20 Winston &amp; Strawn. And remind me, does that refresh<br/>21 your recollection as to the lawyer with whom you<br/>22 spoke about that matter?</p> <p>23 A That sounds -- I can't say with<br/>24 100 percent certainty but that sounds very familiar.</p> <p>25 Q Okay. Let me --</p>                          | <p style="text-align: right;">Page 69</p> <p>1 A I recall having discussions with my team<br/>2 about the subject matter of Michael's e-mail, but<br/>3 beyond that I don't recall the specifics.</p> <p>4 Q Okay. So it's -- and we don't have to go<br/>5 to it, but the invoice reflects on 27 January a<br/>6 telephone conference with Mr. Bloom, Mr. Donziger,<br/>7 and you regarding the 1782 petition. Is that --<br/>8 would that be consistent with your, whatever memory<br/>9 you have about this time period, 27 January, and<br/>10 discussions with Mr. Bloom?</p> <p>11 A Yes.</p> <p>12 Q Okay. Let me show you tab 4, if I might.<br/>13 Tab 4 is from your production Bates labeled<br/>14 BHFS 18 through 23, and it's 4006 -- 8, 4008.<br/>15 (Exhibit 4008 marked.)</p> <p>16 Q (BY MR. BLUME) If I could ask you just to<br/>17 look through those pages. Tell me if you recognize<br/>18 the handwriting in these notes.</p> <p>19 A The handwriting is not mine. I don't<br/>20 believe it's Michael Hoke's. So that I don't -- I<br/>21 don't know that this -- that these -- that Ericka<br/>22 Englert wrote these notes. I suspect she did.</p> <p>23 Q And as a way of -- if perhaps we could<br/>24 turn to Exhibit 4000, which is your invoice -- I'm<br/>25 sorry, 4001, perhaps.</p> |

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| <p style="text-align: right;">Page 70</p> <p>1 A I think it's -- you're right.</p> <p>2 Q So if I could just to help your memory,</p> <p>3 the first entry of the handwritten notes is</p> <p>4 January 28. And it says, Greg, from Winston &amp;</p> <p>5 Strawn.</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q If I could direct your attention to the</p> <p>9 time entry for January 28th for Ericka Englert where</p> <p>10 it says in Exhibit 4000, telephone conference with G</p> <p>11 Ewing re standards for opposing 1782 request.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q I'll represent to you G Ewing is Greg</p> <p>15 Ewing from Winston &amp; Strawn. Does that in any way</p> <p>16 help you identify these handwritten notes as those</p> <p>17 belonging to Ericka Englert?</p> <p>18 A Well, it's consistent. The entry on 4000</p> <p>19 is consistent with these being Ericka Englert's</p> <p>20 notes.</p> <p>21 Q Okay. Do you know, in your discussions</p> <p>22 with Mr. Donziger, did he say anything to you which</p> <p>23 suggested that he had a previous relationship with</p> <p>24 Eric Bloom or Winston &amp; Strawn? And by previous</p> <p>25 mean before January of 2010.</p>  | <p style="text-align: right;">Page 72</p> <p>1 actually has the bottom of Bates BHFS 18 cut off as</p> <p>2 well.</p> <p>3 THE DEPONENT: Your Honor, we can</p> <p>4 certainly -- we can do a better job of copying this</p> <p>5 document and get it to whomever you tell us to get it</p> <p>6 to.</p> <p>7 THE SPECIAL MASTER: Get it to counsel,</p> <p>8 examining counsel, who will circulate it to us and to</p> <p>9 Mr. Gomez, please.</p> <p>10 And just for safety sake, for my purposes,</p> <p>11 because we're not going to have you again, I don't</p> <p>12 believe, is it fair to say that these handwritten</p> <p>13 notes were kept by the Brownstein firm in the</p> <p>14 ordinary course of business?</p> <p>15 THE DEPONENT: Yes.</p> <p>16 THE SPECIAL MASTER: Is it fair to say</p> <p>17 that it is part of the business of the Brownstein</p> <p>18 firm to have its lawyer taking notes of</p> <p>19 conversations?</p> <p>20 THE DEPONENT: Yes, Your Honor.</p> <p>21 THE SPECIAL MASTER: Okay.</p> <p>22 Q (BY MR. BLUME) And part of the business</p> <p>23 for those lawyers to then keep them in files related</p> <p>24 to client activities?</p> <p>25 A Yes.</p>  |
| <p style="text-align: right;">Page 71</p> <p>1 MR. GOMEZ: Objection. Form.</p> <p>2 THE SPECIAL MASTER: You may answer.</p> <p>3 Q (BY MR. BLUME) If you understand. It was</p> <p>4 not a very good question.</p> <p>5 A I'm not sure I do understand it.</p> <p>6 Q In January of 2010, did Mr. Donziger say</p> <p>7 anything to you to suggest that he had a previous</p> <p>8 relationship or had worked before that time with the</p> <p>9 Winston &amp; Strawn firm or with Eric Bloom</p> <p>10 specifically?</p> <p>11 A I don't recall him saying that.</p> <p>12 Q Okay. Let me turn to exhibit -- or</p> <p>13 tab 51, if I might.</p> <p>14 THE SPECIAL MASTER: Excuse me, can we go</p> <p>15 back to Exhibit 4008?</p> <p>16 MR. BLUME: Yes, sir.</p> <p>17 THE SPECIAL MASTER: Does somebody have</p> <p>18 the original? Because my copy has the bottom line</p> <p>19 cut off and it looks like a line I would be</p> <p>20 interested in for purposes of ruling.</p> <p>21 MR. BLUME: We will check, Your Honor,</p> <p>22 whether that -- it may be that that's how the copy</p> <p>23 came to us, or it may be the copy we made. Yeah,</p> <p>24 looking at the receipt from the Brownstein firm, and</p> <p>25 I know this happens often, the copy we received</p> | <p style="text-align: right;">Page 73</p> <p>1 Q Thank you.</p> <p>2 MR. BLUME: Thank you, Your Honor.</p> <p>3 (Exhibit 4009 marked.)</p> <p>4 Q (BY MR. BLUME) Let me hand you what's now</p> <p>5 marked as Exhibit 4009. This is an e-mail dated</p> <p>6 21 March 2010 from you to Mr. Donziger, copy</p> <p>7 Ms. Englert and Mr. Hoke.</p> <p>8 I would ask you to take a moment to review</p> <p>9 it. And just so you understand the chronology of</p> <p>10 what I would like to do today, this is a</p> <p>11 21 March 2010 e-mail reflecting, as I understand it,</p> <p>12 and I'll ask you specifically, your decision to</p> <p>13 withdraw.</p> <p>14 I would like to talk about this e-mail and</p> <p>15 then we'll backtrack to the events that may have led</p> <p>16 up to this.</p> <p>17 But I wanted to start here and have you</p> <p>18 tell me, to the best of your recollection, why was it</p> <p>19 that the Brownstein firm withdrew from representing</p> <p>20 the LAPs in the 1782 proceedings in Colorado?</p> <p>21 MR. GOMEZ: Objection. Privilege, to the</p> <p>22 extent it would reveal attorney-client communications</p> <p>23 or attorney work product.</p> <p>24 THE SPECIAL MASTER: Overruled. This very</p> <p>25 question, to my recollection, was asked without</p> |

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| <p style="text-align: right;">Page 74</p> <p>1 objection of Mr. Donziger in his 1782, almost in<br/>     2 these words. And anything, anything that<br/>     3 Mr. Donziger said that led up to this e-mail and to<br/>     4 the statements in this e-mail, is likely, I'm not<br/>     5 ruling yet because I haven't heard it, is likely to<br/>     6 be subject to crime fraud exception.</p> <p>7 A Well, as I recall, we were facing a couple<br/>     8 of deadlines. I believe we had a filing in court to<br/>     9 make. And, secondly, and 4009 refreshes my<br/>     10 recollection on this now, we had a meet and confer<br/>     11 responsibility with Chevron's counsel, you folks.</p> <p>12 And we had been, as I stated earlier,<br/>     13 Mr. Donziger had told us over some time period that<br/>     14 we were going to be getting factual support for the<br/>     15 representations that we might make in front of Judge<br/>     16 Kane and in front of your partners during the meet<br/>     17 and confer.</p> <p>18 And with respect to the legal issues that<br/>     19 I referenced earlier, 4009 refreshes my recollection<br/>     20 that we were waiting to get maybe even an affidavit<br/>     21 from one of their Ecuadorian lawyers, which stated<br/>     22 certain privilege and confidentiality provisions<br/>     23 under Ecuadorian law that, as I recall, we were<br/>     24 talking to Steven about, might have some persuasive<br/>     25 impact in front of Judge Kane.</p> | <p style="text-align: right;">Page 76</p> <p>1 I'm not sure. But some lawyer from out of state who<br/>     2 was under the -- I don't want to say the team because<br/>     3 I'm not sure who he was representing, but he came out<br/>     4 and met with Stratus.</p> <p>5 And as I recall, learned some disturbing<br/>     6 information that may have even caused him to<br/>     7 withdraw. And I don't recall whether I was told or I<br/>     8 concluded from what we did learn that perhaps there<br/>     9 was conduct by Stratus that was inconsistent with<br/>     10 what we understood, which was that there was no<br/>     11 misconduct. And so things kind of came to a head.<br/>     12 And I just concluded that I was not comfortable<br/>     13 proceeding.</p> <p>14 Q And just so I'm clear --</p> <p>15 THE SPECIAL MASTER: Okay. I think --</p> <p>16 MR. BLUME: Sorry, go ahead, Your Honor.</p> <p>17 THE SPECIAL MASTER: Go ahead.</p> <p>18 MR. BLUME: No, go ahead.</p> <p>19 THE SPECIAL MASTER: I was going to --</p> <p>20 we've been going two hours and I, for one, need a<br/>     21 break, but if you have one more question.</p> <p>22 MR. BLUME: One more question.</p> <p>23 THE SPECIAL MASTER: That's fine.</p> <p>24 MR. BLUME: Yeah, one more question and<br/>     25 then we can break.</p>  |
| <p style="text-align: right;">Page 75</p> <p>1 But as I sit here today, I don't recall<br/>     2 what that is. And we didn't get that information.<br/>     3 We kept being promised we were going to get it, and<br/>     4 there was a woman from Gibson Dunn who was<br/>     5 representing Chevron, who I was dealing with, and who<br/>     6 I had a number of discussions with, as I recall, and<br/>     7 who was quite patient, when, as I recall, I kept<br/>     8 delaying the meet and confer. And I think she gave<br/>     9 me a couple of extensions.</p> <p>10 And then, as I recall, she said, you know,<br/>     11 something to the effect that we need to fish or cut<br/>     12 bait here. And we kept waiting for the information<br/>     13 and we didn't get it. And -- I've talked so much<br/>     14 I've forgot what the question is.</p> <p>15 Q (BY MR. BLUME) If you recall why it was<br/>     16 you withdrew from your representation of the LAPs.</p> <p>17 A Yeah, so that's one reason. And a second<br/>     18 reason is or was that I think Mr. Donziger's view was<br/>     19 that it would be persuasive to Judge Kane to focus on<br/>     20 Chevron's alleged misconduct. And I don't recall<br/>     21 thinking that was persuasive or relevant as we<br/>     22 understood the law.</p> <p>23 And then a third development and probably<br/>     24 the clincher was I recall a non -- a lawyer from out<br/>     25 of state who may have been representing Stratus, but</p>     | <p style="text-align: right;">Page 77</p> <p>1 Thank you, Your Honor.</p> <p>2 Q (BY MR. BLUME) You indicated that, you<br/>     3 said you don't recall whether you were told or<br/>     4 concluded from what we did learn that perhaps there<br/>     5 was conduct by Stratus that was inconsistent with<br/>     6 what we understood, which was that there was no<br/>     7 misconduct.</p> <p>8 From whom did you gain your understanding<br/>     9 in and around March of 2010 about Stratus's role in<br/>     10 whether there was or was not any misconduct?</p> <p>11 In other words, from whom did you gain<br/>     12 your understanding that led you to balance it against<br/>     13 what you had learned from this other lawyer?</p> <p>14 THE SPECIAL MASTER: Wait a second.</p> <p>15 First -- wait a second. I'm going to object -- I'm<br/>     16 going to sustain the objection. You have now<br/>     17 confused me, therefore, almost by definition, you're<br/>     18 confusing the witness.</p> <p>19 MR. BLUME: Understood.</p> <p>20 THE SPECIAL MASTER: I take it -- let<br/>     21 me --</p> <p>22 MR. BLUME: Please.</p> <p>23 THE SPECIAL MASTER: I take it, Mr. Blume,<br/>     24 what you're trying to ask is, who was it, from whom<br/>     25 did you get your prior understanding that there had</p> |

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| <p style="text-align: right;">Page 78</p> <p>1 been no misconduct?</p> <p>2 MR. BLUME: Correct.</p> <p>3 THE SPECIAL MASTER: Let's start with</p> <p>4 that.</p> <p>5 THE DEPONENT: Mr. Donziger.</p> <p>6 THE SPECIAL MASTER: And from whom do you</p> <p>7 believe you got the understanding as reflected in</p> <p>8 this March 21st e-mail that, in fact, there had been</p> <p>9 misconduct? This out of town lawyer?</p> <p>10 THE DEPONENT: Yes, Your Honor. But my</p> <p>11 recollection is that as a result of our failure to</p> <p>12 get the information that we had been seeking, we</p> <p>13 started to have suspicions and started to feel</p> <p>14 uncomfortable.</p> <p>15 And then when we got the information from</p> <p>16 the out of town lawyer, it was, Okay, I'm concerned</p> <p>17 about our ethical responsibilities.</p> <p>18 THE SPECIAL MASTER: All right. Let's</p> <p>19 take our break.</p> <p>20 MR. BLUME: We'll break. Thank you.</p> <p>21 THE VIDEOGRAPHER: We're going off the</p> <p>22 record at 11:55.</p> <p>23 (Recess taken from 11:55 a.m. to 12:08</p> <p>24 p.m.)</p> <p>25 THE VIDEOGRAPHER: And we are back on the</p> | <p style="text-align: right;">Page 80</p> <p>1 I see a reference in the second paragraph</p> <p>2 to our having been left out of the fact gathering</p> <p>3 efforts in Boulder. And I do now recall that we had</p> <p>4 told Mr. Donziger that we wanted to meet with</p> <p>5 Stratus, and we wanted to attend the meeting.</p> <p>6 And we were left out of that meeting and</p> <p>7 therefore denied access to -- denied the opportunity</p> <p>8 to get what we thought was relevant information. And</p> <p>9 so that concerned us, as well, as I recall.</p> <p>10 Q And when you say denied access, were you</p> <p>11 specifically told not to attend or did the meeting</p> <p>12 happen without your knowledge, or both?</p> <p>13 A Well, I don't recall, but I distinctly</p> <p>14 recall that it wasn't an accident.</p> <p>15 Q If I could turn to tab 55, please.</p> <p>16 MR. BLUME: And 55, Your Honor, has</p> <p>17 already been marked as part of the proceedings and is</p> <p>18 Exhibit 1633.</p> <p>19 THE SPECIAL MASTER: Okay. Just give me</p> <p>20 an opportunity to read it, please.</p> <p>21 MR. BLUME: Sure. And I will simply tell</p> <p>22 Mr. Gomez that it is an e-mail and an attached</p> <p>23 memorandum from Mr. McDermott to Mr. Donziger, dated</p> <p>24 24 May 2010.</p> <p>25 THE SPECIAL MASTER: Hold on. We're</p> |
| <p style="text-align: right;">Page 79</p> <p>1 record at 12:08.</p> <p>2 Q (BY MR. BLUME) Exhibit 400 -- sorry.</p> <p>3 A 9.</p> <p>4 Q -- 9, this is a true and accurate copy of</p> <p>5 an e-mail that you sent to Mr. Donziger on 21 March?</p> <p>6 A I believe so.</p> <p>7 THE VIDEOGRAPHER: Mr. Blume, I'm sorry,</p> <p>8 do you have your microphone on?</p> <p>9 MR. BLUME: No, I don't.</p> <p>10 THE VIDEOGRAPHER: Thank you.</p> <p>11 Q (BY MR. BLUME) And this is an e-mail that</p> <p>12 was kept in the ordinary course of the business of</p> <p>13 the Brownstein firm?</p> <p>14 A Yes.</p> <p>15 Q And it's the ordinary course of the</p> <p>16 Brownstein firm to keep such an e-mail as it relates</p> <p>17 to client matters?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A Could I add something to the --</p> <p>21 Q Yes, please.</p> <p>22 A -- answer because 4009 refreshed my</p> <p>23 recollection about, I guess, one other issue that as</p> <p>24 I now recall also played some role in our decision to</p> <p>25 withdraw.</p>   | <p style="text-align: right;">Page 81</p> <p>1 getting the attachment now.</p> <p>2 (Pause.)</p> <p>3 THE SPECIAL MASTER: Okay. I've read it.</p> <p>4 Q (BY MR. BLUME) Mr. McDermott, attached as</p> <p>5 Exhibit 1633, which is a cover e-mail and attached</p> <p>6 memorandum, I would ask you first, are both the</p> <p>7 e-mail and the attached memorandum documents which</p> <p>8 the Brownstein firm kept in the ordinary course of</p> <p>9 its business?</p> <p>10 A Yes.</p> <p>11 Q And was it the ordinary course of the</p> <p>12 Brownstein firm to keep e-mails such as the cover and</p> <p>13 memos, memorandum, such as that attached in 1633?</p> <p>14 A Yes.</p> <p>15 Q Turning to the memorandum attached --</p> <p>16 THE SPECIAL MASTER: Wait. I think --</p> <p>17 wait a minute, wait a minute. Wait, whoa, whoa,</p> <p>18 whoa. First, you've got to ask him if this is a true</p> <p>19 copy of what is in their files.</p> <p>20 MR. BLUME: Fair enough. You're correct.</p> <p>21 Q (BY MR. BLUME) Mr. McDermott, is the</p> <p>22 e-mail cover and the attached memorandum a true and</p> <p>23 accurate copy of the cover e-mail and memorandum as</p> <p>24 kept in the files of Brownstein Hyatt Farber &amp;</p> <p>25 Schreck?</p>   |

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| <p style="text-align: right;">Page 82</p> <p>1 A And 1633 is something that we produced?</p> <p>2 Q Yes. No, I'm sorry. 1633 is something</p> <p>3 produced by Mr. Donziger, Bates No. DONZ 00056917</p> <p>4 through 56918.</p> <p>5 A Well, I remember this document, and I'm</p> <p>6 sure this is an accurate copy. It didn't come from</p> <p>7 our files, but I distinctly recall preparing this</p> <p>8 information.</p> <p>9 Q And I'm not saying it wasn't in your</p> <p>10 files. It's been marked as an exhibit so the version</p> <p>11 we're using is from the Donziger production.</p> <p>12 A Sure. So the answer is yes.</p> <p>13 Q Okay. Directing your attention, sir, to</p> <p>14 the memorandum itself dated 24 May 2010 to Steven</p> <p>15 Donziger from you, do you recall why you wrote this</p> <p>16 memorandum to Mr. Donziger in May, which was a few</p> <p>17 months after your official withdrawal from the</p> <p>18 Colorado action?</p> <p>19 A Yes.</p> <p>20 Q Why was that?</p> <p>21 A Mr. Donziger had retained a lawyer at</p> <p>22 least once removed from me. There was me and then he</p> <p>23 retained somebody else and then he retained a lawyer</p> <p>24 in Denver by the name of Jay Horowitz.</p> <p>25 And as I recall, I think Mr. Donziger had</p>   | <p style="text-align: right;">Page 84</p> <p>1 we have not received the pertinent documents and</p> <p>2 information that were necessary to support the</p> <p>3 arguments we had discussed as being the main reasons</p> <p>4 to oppose the subpoenas and that would support the</p> <p>5 arguments we deem to be compelling based on our legal</p> <p>6 research.</p> <p>7 Is that consistent with what you told me</p> <p>8 earlier about the lack of factual legal support that</p> <p>9 you had received from Mr. Donziger in the course of</p> <p>10 your representing the LAPs?</p> <p>11 A Yes.</p> <p>12 Q And the second paragraph talks about this</p> <p>13 gentleman, Jeff Shinder.</p> <p>14 And the last sentence says, Mr. Shinder</p> <p>15 traveled to Boulder to meet with witnesses. BHFS did</p> <p>16 not participate in the interviews.</p> <p>17 BHFS is Brownstein Hyatt Farber &amp; Schreck;</p> <p>18 is that correct?</p> <p>19 A Yes.</p> <p>20 Q And your statement that you didn't</p> <p>21 participate in the interviews, is that consistent</p> <p>22 with what you told me is another reason for your</p> <p>23 withdrawal is that you had asked to participate in</p> <p>24 the meetings with Stratus, but were refused access to</p> <p>25 that, to Stratus?</p>  |
| <p style="text-align: right;">Page 83</p> <p>1 given us, I don't know, 25, a nominal retainer, 25 or</p> <p>2 \$50,000. And at the time we withdrew, I mean, we</p> <p>3 paid our bill out of the retainer, as I recall.</p> <p>4 And Mr. Horowitz was sending nasty letters</p> <p>5 and e-mails to our firm grousing about my conduct and</p> <p>6 demanding, I think demanding that we give some or all</p> <p>7 of the money back.</p> <p>8 And at some point, Mr. Horowitz asked me</p> <p>9 why we withdrew. And I think -- I think at that</p> <p>10 point -- actually, maybe by this point he hadn't sent</p> <p>11 me any nasty e-mails. He had just talked to me and</p> <p>12 asked me why. And I said, well, Mr. Donziger knows</p> <p>13 why.</p> <p>14 And then somehow or another, we agreed</p> <p>15 that I would draft a memorandum and send it to</p> <p>16 Mr. Donziger. And I think the reason I sent it to</p> <p>17 Mr. Donziger and not Mr. Horowitz is there was some</p> <p>18 question as to who was representing Mr. Donziger. So</p> <p>19 that's why I drafted the memo.</p> <p>20 Q And the memorandum, excluding the</p> <p>21 introduction paragraph, contains kind of four</p> <p>22 substantive paragraphs reflecting what you just</p> <p>23 described as reasons for your withdrawal.</p> <p>24 The first paragraph is, it says in the</p> <p>25 second sentence, Despite our repeated request to you,</p> | <p style="text-align: right;">Page 85</p> <p>1 A Yes, that's my recollection.</p> <p>2 Q Okay. And then the third paragraph says</p> <p>3 that, Shinder told us that after meetings with the</p> <p>4 witnesses, he was concerned that despite your</p> <p>5 representations to us that Stratus's work with the</p> <p>6 Ecuadorian expert comply with Ecuadorian procedure</p> <p>7 and was proper, he understood the opposite to be</p> <p>8 true.</p> <p>9 Is that consistent with what we were</p> <p>10 talking about right immediately before the break,</p> <p>11 about that your understanding, from what Mr. Donziger</p> <p>12 had told you was inconsistent with what Mr. Shinder</p> <p>13 learned from his discussion of Stratus's role in the</p> <p>14 Ecuadorian case?</p> <p>15 A Yes. I think I was a bit uncertain as to</p> <p>16 whether Shinder expressly told us that he had learned</p> <p>17 that something was amiss, or whether we, based upon</p> <p>18 what Shinder told us, we concluded that that was</p> <p>19 probably what Shinder had learned.</p> <p>20 This refreshes my recollection that</p> <p>21 apparently Shinder told us that, based upon what he</p> <p>22 learned, he, in fact, concluded that there was a</p> <p>23 discrepancy.</p> <p>24 Q And the last paragraph talks about the</p> <p>25 meet and confer with Gibson Dunn. And it says, the</p> |

22 (Pages 82 - 85)

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| <p style="text-align: right;">Page 86</p> <p>1 last sentence, quote, We were not given timely<br/>2 information or direction as to what our position<br/>3 would be at the meet and confer.<br/>4 Is that consistent with what you told me<br/>5 about your inability to meet and confer responsibly,<br/>6 given the lack of information from Donziger to you?<br/>7 A Yes.<br/>8 Q Since we're talking about Mr. Shinder,<br/>9 let's turn to tab 50. And while we're doing that, do<br/>10 you know a gentleman by the name of Doug Beltman?<br/>11 A The name is not familiar.<br/>12 Q Okay. Do you know any of the principals<br/>13 of Stratus Consulting? Have you ever talked with<br/>14 them or met them?<br/>15 A I have the faintest of recollections that<br/>16 at some point I spoke with somebody, one of the<br/>17 principals at Stratus, when we were -- when we were<br/>18 trying to decide whether we would represent them.<br/>19 And all I recall the principal telling me<br/>20 is that they were thinking about it or they had<br/>21 turned it over to their counsel for consideration.<br/>22 But Beltman's name isn't familiar.<br/>23 Q -- okay. And that conversation on the<br/>24 engagement was before this discussion about meeting<br/>25 Stratus in Boulder came about; is that correct?</p> | <p style="text-align: right;">Page 88</p> <p>1 Q Let me direct your attention to what is<br/>2 written in it. It says up top left, the date as I<br/>3 mentioned is 3/19/2010. And does that refresh your<br/>4 recollection about in or around the time that someone<br/>5 from your firm had that conversation to which you<br/>6 referred with Jeff Shinder, after his meeting in<br/>7 Boulder?<br/>8 MR. GOMEZ: Objection. Form.<br/>9 THE SPECIAL MASTER: I'm sorry? What was<br/>10 the objection?<br/>11 MR. GOMEZ: Form.<br/>12 THE SPECIAL MASTER: What was the form?<br/>13 Let me -- hold on a second, Mr. Gomez. I want to<br/>14 look at it.<br/>15 I'm going to sustain that form.<br/>16 Break it down, Mr. Blume.<br/>17 MR. BLUME: Sure.<br/>18 Q (BY MR. BLUME) Do you recall --<br/>19 THE SPECIAL MASTER: That is, I'm going to<br/>20 sustain the objection to form. I'm not sustaining<br/>21 the form.<br/>22 MR. BLUME: Very well.<br/>23 Q (BY MR. BLUME) Mr. McDermott, do you<br/>24 recall approximately when Mr. Shinder met with the<br/>25 Stratus people in Boulder?</p>  |
| <p style="text-align: right;">Page 87</p> <p>1 A I'm pretty sure.<br/>2 Q All right. And let me direct your<br/>3 attention to what has been marked 4010.<br/>4 (Exhibit 4010 marked.)<br/>5 MR. BLUME: Mr. Gomez, these are<br/>6 handwritten notes with the date in the upper<br/>7 right-hand corner 3/19/2010.<br/>8 Q (BY MR. BLUME) And after you've had a<br/>9 chance to review it, I would ask you first,<br/>10 Mr. McDermott, whether you recognize the handwriting<br/>11 of these notes?<br/>12 A I don't, unless they're Ericka's. Again,<br/>13 I don't think they're Michael Hoke's. They're not<br/>14 mine. And if they came from our files, as it appears<br/>15 that they did, then I assume they're Ericka's. But I<br/>16 don't know that.<br/>17 Q Okay. And is it the -- this was produced<br/>18 with a Bates No. BHFS 56, coming from your files.<br/>19 Would it be the ordinary course of lawyers<br/>20 in your firm to take notes of substantive meetings?<br/>21 A Yes.<br/>22 Q And would it be the ordinary course of<br/>23 lawyers of the firm to maintain those notes in your<br/>24 files?<br/>25 A Yes.</p>   | <p style="text-align: right;">Page 89</p> <p>1 A Yeah. It appears to be on or about<br/>2 March 19th.<br/>3 Q Okay.<br/>4 A Or March 18th.<br/>5 Q And I think you testified earlier that you<br/>6 learned of the substance of Mr. Shinder's meeting<br/>7 with Stratus by way of you, being the firm, learned<br/>8 by way of a phone call with Mr. Shinder; is that<br/>9 correct?<br/>10 A Yes.<br/>11 Q And do you recall whether you participated<br/>12 personally in that call or members of your team did<br/>13 only?<br/>14 A I don't -- I don't remember. What I do<br/>15 remember is sitting in the parking lot of a back<br/>16 doctor, learning of this one way or another in the<br/>17 parking lot. And literally telling Michael or<br/>18 Ericka, having a discussion about my discomfort.<br/>19 And we talked it through. And then we<br/>20 concluded, although it was my responsibility, I was a<br/>21 partner in the case, that we had to get out.<br/>22 Q And looking at some of the writings in<br/>23 these notes, the third line down, it says, Beltman,<br/>24 underlined, told was retained to do environmental<br/>25 evaluation, but then morphed into him writing.</p> |

23 (Pages 86 - 89)

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| <p style="text-align: right;">Page 90</p> <p>1        Do you recall, in learning about the call<br/>     2 with Mr. Shinder, that your firm learned that, in<br/>     3 fact, Mr. Beltman -- that this is consistent with<br/>     4 what you learned, that Mr. Beltman had been retained<br/>     5 to do an evaluation, but then ultimately ended up<br/>     6 writing significant portions of the Cabrera report?</p> <p>7        A I don't know about significant portions,<br/>     8 but I do -- but 4010 does refresh my recollection<br/>     9 that I did learn that Beltman or Stratus had written<br/>     10 some portion of the Cabrera report.</p> <p>11        I don't recall how significant it was.</p> <p>12        Q Sure. There's a comment in here that's<br/>     13 right after that in small --</p> <p>14        THE SPECIAL MASTER: Excuse me. Are you<br/>     15 looking at -- are you looking at 4010?</p> <p>16        THE DEPONENT: Yes, Your Honor.</p> <p>17        THE SPECIAL MASTER: Mr. Blume?</p> <p>18        THE DEPONENT: Yes, Your Honor.</p> <p>19        MR. BLUME: Yes, Your Honor.</p> <p>20        THE SPECIAL MASTER: You know, you have to<br/>     21 think of transcript. Just imagine what the reader of<br/>     22 the transcript just heard from you. Hasn't the<br/>     23 faintest clue what you're talking about. So if you<br/>     24 say, to do this right, you have to say, Mr. Witness,<br/>     25 would you please take a look again at 4010?</p> | <p style="text-align: right;">Page 92</p> <p>I        THE SPECIAL MASTER: Now looking at 4010,<br/>     2 the handwritten notes, having now seen Exhibit 4000<br/>     3 and your testimony about that, does this help you<br/>     4 recall or does this help you tell us whose notes<br/>     5 these are, 4010?</p> <p>6        THE DEPONENT: Yes, Your Honor.</p> <p>7        MR. GOMEZ: With due respect, objection to<br/>     8 form.</p> <p>9        THE SPECIAL MASTER: What did I do now?<br/>     10 Hold on a second, Mr. Gomez, let me just look.</p> <p>11        MR. TREECE: Your Honor, may I interject<br/>     12 something?</p> <p>13        THE SPECIAL MASTER: Yes, sir.</p> <p>14        MR. TREECE: Your Honor might look at the<br/>     15 first entry on that page, which is the 3/19/10 entry<br/>     16 of Ericka Englert, as you work through these lines of<br/>     17 questions.</p> <p>18        THE SPECIAL MASTER: I really have only<br/>     19 one more question, which is, you know, counsel tried<br/>     20 to identify these notes before. I think the way to<br/>     21 try to identify these notes is to look at the<br/>     22 document and that's what I'm asking the witness.</p> <p>23        Does this help you help us as to who the<br/>     24 author of these notes was?</p> <p>25        THE DEPONENT: Yes, Your Honor. I think</p>  |
| <p style="text-align: right;">Page 91</p> <p>1        That way the reader of the transcript who<br/>     2 doesn't necessarily have the video, and I wouldn't if<br/>     3 I weren't reading the transcript, would know what<br/>     4 document he needs to have or she needs to have in<br/>     5 front of her.</p> <p>6        And while I'm on the subject, this is not<br/>     7 adding work, this is reducing work, what I'm about to<br/>     8 do.</p> <p>9        Would you take a look, Mr. Witness, at<br/>     10 Exhibit 4000.</p> <p>11        THE DEPONENT: I have it in front of me,<br/>     12 Your Honor.</p> <p>13        THE SPECIAL MASTER: And would you look at<br/>     14 page 16.</p> <p>15        THE DEPONENT: Yes, Your Honor.</p> <p>16        THE SPECIAL MASTER: And would you look at<br/>     17 the two entries, the fourth from the bottom and the<br/>     18 third from the bottom. Do you see those?</p> <p>19        THE DEPONENT: Yes.</p> <p>20        THE SPECIAL MASTER: And do those two<br/>     21 entries indicate to you that the person who had the<br/>     22 conversation, these seem to show two conversations,<br/>     23 is that the person who had the conversation with<br/>     24 Mr. Shinder was Michael Hoke?</p> <p>25        THE DEPONENT: Yes, Your Honor.</p>  | <p style="text-align: right;">Page 93</p> <p>1 they are Mr. Hoke's. And I misspoke earlier when I<br/>     2 said I didn't think they were Mr. Hoke's. But I do<br/>     3 think they're Mr. Hoke's notes.</p> <p>4        THE SPECIAL MASTER: And in fact, you see,<br/>     5 do you not, a telephone number for Ericka there,<br/>     6 right?</p> <p>7        THE DEPONENT: Yes.</p> <p>8        THE SPECIAL MASTER: See that?</p> <p>9        THE DEPONENT: Yes.</p> <p>10        THE SPECIAL MASTER: Well, she's not going<br/>     11 to write her own telephone number on her own notes,<br/>     12 is she?</p> <p>13        THE DEPONENT: Associates do odd things.</p> <p>14        THE SPECIAL MASTER: That's true.</p> <p>15        MR. GOMEZ: Excuse me, Mr. Gitter, excuse<br/>     16 me. This is Mr. Gomez. I just need to state for the<br/>     17 record that I object to the form. I think there's<br/>     18 some leading here. I think there's some speculation<br/>     19 involved in the questions. I think the witness -- I<br/>     20 don't want to be accused of violating the rules on<br/>     21 speaking objections, and I'll just leave it at that.</p> <p>22        THE SPECIAL MASTER: Okay. I disagree<br/>     23 with you. This is, you know, just trying to identify<br/>     24 something. And this is usually how I do it and many<br/>     25 others that I know do it. I don't think it's</p> |

24 (Pages 90 - 93)

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| <p style="text-align: right;">Page 94</p> <p>1 objectionable.</p> <p>2 In any event, now, Mr. Blume, try to speed<br/>3 it up.</p> <p>4 Q (BY MR. BLUME) If you could describe for<br/>5 us -- well, do you recall the conversation you had<br/>6 with Mr. Hoke about his call with Mr. Shinder and<br/>7 what he told you specifically about that call?</p> <p>8 A Yes, but I'm not -- I don't recall whether<br/>9 I first learned of the contents of the call in<br/>10 writing or in a discussion with Mr. Hoke. I know at<br/>11 some point I probably had multiple -- I know I had<br/>12 multiple -- I know I had discussions with Mr. Hoke.</p> <p>13 Q Okay.</p> <p>14 A So, yeah, I recall that Mr. Hoke was<br/>15 troubled by what he had learned. And he -- and he<br/>16 conveyed to me what is generally, what is represented<br/>17 in 4010.</p> <p>18 Q Was part of that discussion that Mr. Hoke<br/>19 had with you, did he mention this comment he makes<br/>20 about halfway into the page where it says, Be leery<br/>21 about information we're getting.</p> <p>22 Do you recall having that conversation<br/>23 about that with Mr. Hoke, about his conversation with<br/>24 Mr. Shinder?</p> <p>25 A I actually don't recall that part of it.</p> | <p style="text-align: right;">Page 96</p> <p>1 MR. BLUME: And Mr. Gomez, these are<br/>2 handwritten notes, upper right-hand corner dated<br/>3 3/19/2010. Upper left-hand corner, it says in<br/>4 handwriting, Call with Steven Donziger.</p> <p>5 Q (BY MR. BLUME) And I would ask you,<br/>6 Mr. McDermott, if you recognize the handwriting on<br/>7 Exhibit 4011, which is Bates No. BHFS 55.</p> <p>8 A Well, I think it's Mr. Hoke's handwriting.</p> <p>9 Q Okay. And just so I'm clear, there's a<br/>10 middle number on the top 13920.1. Is that, in fact,<br/>11 a client and matter number that the Brownstein firm<br/>12 assigned to this matter?</p> <p>13 And I could direct your attention to<br/>14 Exhibit 4000 to refresh your recollection.</p> <p>15 A Well, you're not refreshing my<br/>16 recollection because as any lawyer at Brownstein will<br/>17 tell you, I never know what the client numbers are.</p> <p>18 Q Okay. Is the client number on the invoice<br/>19 that is Exhibit 4000 consistent with that number in<br/>20 the handwritten notes?</p> <p>21 A Yes.</p> <p>22 Q And was it the ordinary course of<br/>23 Brownstein lawyers to keep notes such as what we have<br/>24 in Exhibit 4011?</p> <p>25 A Yes.</p>  |
| <p style="text-align: right;">Page 95</p> <p>1 Q Okay. What about the next line where he<br/>2 says, Like criminal defense lawyer with guilty client<br/>3 making procedural objections.</p> <p>4 Does that refresh your memory about that<br/>5 portion of the conversation?</p> <p>6 A No.</p> <p>7 Q And what about the next line? It says,<br/>8 Physically ill - fraud on foreign court.</p> <p>9 Do you recall having a conversation with<br/>10 Mr. Hoke about that portion of his call?</p> <p>11 A Generally, in the sense that Michael Hoke,<br/>12 who is a rather deliberate individual, and does not<br/>13 get exercised (sic) about much, was troubled by what<br/>14 he had learned. And we were all troubled by what we<br/>15 had learned.</p> <p>16 Q Is it fair to say that one of the things<br/>17 that troubled you about what you had learned is the<br/>18 fact that it was inconsistent with what you had<br/>19 learned previously from Mr. Donziger about Stratus's<br/>20 role in the Ecuadorian litigation?</p> <p>21 A Yes.</p> <p>22 Q If I could turn to tab 52, please.<br/>23 (Exhibit 4011 marked.)</p> <p>24 Q (BY MR. BLUME) I place before you<br/>25 Document 4011.</p>  | <p style="text-align: right;">Page 97</p> <p>1 Q And was it the ordinary course of the firm<br/>2 to maintain those notes in its client files?</p> <p>3 A Yes.</p> <p>4 Q These handwritten notes purport to reflect<br/>5 a call with Mr. Donziger on March 19th, 2010.</p> <p>6 Do you recall whether you personally<br/>7 participated in a call with Mr. Donziger on or around<br/>8 March 19th, 2010?</p> <p>9 A I believe I did. I would hope that I<br/>10 wouldn't have asked an associate to do that. But I'm<br/>11 pretty sure that I did, but I guess I'm not positive.</p> <p>12 Q Okay. And I only ask because I didn't see<br/>13 it reflected in your time sheets. Is it possible<br/>14 that you would have had that call and not recorded<br/>15 the time, or perhaps you weren't on that call?</p> <p>16 A Well, actually, I think probably what<br/>17 happened is that I, again, was in this parking lot of<br/>18 the physician, and so I probably didn't<br/>19 contemporaneously write it on my time sheet, which is<br/>20 not good.</p> <p>21 But my guess is that's what happened, but<br/>22 maybe not. Maybe I wasn't on the call.</p> <p>23 Q Well, if I could direct your attention to<br/>24 the bottom quarter of the notes where it says, JBM's<br/>25 cell. Is that a number that you would have provided</p> |

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| <p style="text-align: right;">Page 98</p> <p>1 to Mr. Donziger for -- in this circumstance, or would<br/>     2 it be the practice of Mr. Hoke to give out your cell phone<br/>     3 without your permission?</p> <p>4 A Well, that was and is my cell number. I<br/>     5 think I was interpreting this that there was a call<br/>     6 with Mr. Donziger, and then I probably told Michael<br/>     7 to call me and he called me on my cell phone. But --</p> <p>8 Q Okay. And let me -- I'm sorry, my error.<br/>     9 Direct your attention -- in fact, there is a notation<br/>     10 in the time sheet, Exhibit 4000, on March 19th, 2010.</p> <p>11 While your time is not recorded,<br/>     12 Ms. Englert's time says, telephone conference with S.<br/>     13 Donziger, John McDermott and Michael Hoke.</p> <p>14 Does that refresh your recollection more<br/>     15 specifically whether you actually participated in<br/>     16 this call with Mr. Donziger?</p> <p>17 A And Steven Donziger, right?</p> <p>18 Q Right.<br/>     19 A On March 19th. Yes, it does refresh my<br/>     20 recollection. And it appears that I did participate.</p> <p>21 Q And what do you recall would be the<br/>     22 purpose with Mr. Donziger, and what do you recall was<br/>     23 discussed?</p> <p>24 THE SPECIAL MASTER: Hello? This is --<br/>     25 this is the New York conference room and we have lost</p> | <p style="text-align: right;">Page 100</p> <p>1 A Well, my recollection is that we were<br/>     2 calling --</p> <p>3 Q (BY MR. BLUME) Sorry.</p> <p>4 A My recollection is that we were<br/>     5 telephoning Mr. Donziger to tell him what we had<br/>     6 learned and advise him of our concerns with<br/>     7 proceeding in the case. And maybe to get his<br/>     8 reaction.</p> <p>9 Q And there's a statement in the top of the<br/>     10 notes which says, Clear Stratus was working with<br/>     11 local counsel to prepare materials to submit to<br/>     12 Cabrera.</p> <p>13 In the sub bullet 11 of 17, Annexes<br/>     14 prepared by Stratus almost whole cloth, also exec<br/>     15 summary.</p> <p>16 Do you recall speaking to that level of<br/>     17 specificity with Mr. Donziger about Stratus's role in<br/>     18 the Cabrera report?</p> <p>19 A No, I don't.</p> <p>20 MR. GOMEZ: Objection.</p> <p>21 THE SPECIAL MASTER: I'm sorry, what was<br/>     22 that, Mr. Gomez?</p> <p>23 MR. GOMEZ: Objection. Privilege.</p> <p>24 THE SPECIAL MASTER: Overruled for the<br/>     25 waiver, but I need to know something at this point.</p>  |
| <p style="text-align: right;">Page 99</p> <p>1 you for about ten minutes or five minutes.<br/>     2 Mr. Gomez, are you on?<br/>     3 MR. GOMEZ: Yes, I am.<br/>     4 THE SPECIAL MASTER: Have you been on the<br/>     5 whole time?<br/>     6 MR. GOMEZ: Yes, I can hear everything<br/>     7 that is going on.<br/>     8 THE SPECIAL MASTER: Oh, we've been off<br/>     9 both video and audio for maybe five minutes. We have<br/>     10 no video right now, so we'll just listen.<br/>     11 MR. BLUME: Okay. We will make efforts,<br/>     12 Your Honor, my apologies, to get that video link back<br/>     13 up.<br/>     14 THE SPECIAL MASTER: That's all right. We<br/>     15 have LiveNote is, however, working, so we didn't miss<br/>     16 very much.<br/>     17 MR. BLUME: Okay. Great.<br/>     18 Q (BY MR. BLUME) If you could tell us,<br/>     19 Mr. McDermott, what your recollection was of the call<br/>     20 with Mr. Donziger on March 19th, 2010?<br/>     21 MR. GOMEZ: Objection. Privilege.<br/>     22 THE SPECIAL MASTER: Well, it's overruled<br/>     23 for a start. It's been waived. And once I hear the<br/>     24 testimony about it, I may also add the crime fraud<br/>     25 exception.</p>  | <p style="text-align: right;">Page 101</p> <p>1 Mr. McDermott, who was speaking? Was it<br/>     2 you or someone on your team, or was it Mr. Donziger<br/>     3 in the first two lines, as reflected in the first two<br/>     4 lines that Mr. Blume just read?<br/>     5 Clear Stratus was working with local<br/>     6 counsel to prepare materials to submit to Cabrera.<br/>     7 Bullet point 11 of 17, Annexes prepared by Stratus<br/>     8 almost whole cloth, also exec summary.<br/>     9 Who was speaking those words or the<br/>     10 substance of those words?<br/>     11 THE DEPONENT: Your Honor, my best<br/>     12 recollection is it was somebody from our team,<br/>     13 either -- I believe it was someone from our team. I<br/>     14 would think it would be -- have been me because I<br/>     15 think the nature of this call was such that I would<br/>     16 have taken the lead. But I can't be certain.<br/>     17 Q (BY MR. BLUME) Do you recall what<br/>     18 Mr. Donziger's reaction was to your describing for<br/>     19 him your call with Mr. Shinder?<br/>     20 MR. GOMEZ: Objection. Privilege.<br/>     21 THE SPECIAL MASTER: Overruled. Waived.<br/>     22 A What did he say, waived?<br/>     23 Q (BY MR. BLUME) You can answer. He said<br/>     24 waived.<br/>     25 A Well, my recollection --</p> |

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| <p style="text-align: right;">Page 102</p> <p>1 THE SPECIAL MASTER: Mr. McDermott --<br/>     2 THE DEPONENT: Yes, Your Honor.<br/>     3 THE SPECIAL MASTER: I'm sorry. If you're<br/>     4 waiting on me, just please answer the question.<br/>     5 THE DEPONENT: Thank you.<br/>     6 A My recollection is, what is referenced<br/>     7 behind SD on 4011, which is that Mr. Donziger said<br/>     8 that -- acknowledged that it had occurred, but said<br/>     9 he didn't think it was inappropriate under Ecuadorian<br/>     10 law.</p> <p>11 Q (BY MR. BLUME) There's a reference down<br/>     12 on the bottom of, in a sub bullet 1 --</p> <p>13 THE SPECIAL MASTER: I add -- excuse me<br/>     14 I add the crime fraud exception now, as to the<br/>     15 portion uttered by Mr. Donziger.</p> <p>16 Q (BY MR. BLUME) There's a bullet point<br/>     17 number 1 down below that says, Paramount issue,<br/>     18 ethical, check all filings and correspondence for<br/>     19 misrepresentations.</p> <p>20 Do you recall that part of the discussion?</p> <p>21 A Yes.</p> <p>22 Q Okay. What do you recall about that?</p> <p>23 A Well, my recollection is that Donziger,<br/>     24 Mr. Donziger, was not on that part of the call. That<br/>     25 although I believe I raised those same issues in the</p>   | <p style="text-align: right;">Page 104</p> <p>1 the concerns that were developing.<br/>     2 Q Okay. So just so the record is clear, did<br/>     3 you begin to develop, you mentioned earlier,<br/>     4 suspicions and concerns even before you had a deep,<br/>     5 substantive conversation with Mr. Shinder?</p> <p>6 A Yes.</p> <p>7 MR. GOMEZ: Objection.</p> <p>8 Q (BY MR. BLUME) And are those the concerns<br/>     9 that were raised with Mr. Donziger in this call on<br/>     10 Exhibit 4011?</p> <p>11 MR. GOMEZ: I'm sorry, could you repeat<br/>     12 that, please?</p> <p>13 Q (BY MR. BLUME) Yes, did -- was it those<br/>     14 initial concerns and suspicions that led you to have<br/>     15 the conversation with Mr. Donziger as reflected in<br/>     16 Exhibit 4011, as well as this earlier call with<br/>     17 Mr. Shinder, first call with Mr. Shinder?</p> <p>18 MR. GOMEZ: Objection.</p> <p>19 THE SPECIAL MASTER: I'm sorry, I'm<br/>     20 confused by the question. The question --<br/>     21 (Audio feedback.)</p> <p>22 MR. BLUME: Your Honor, yeah, if you could<br/>     23 disconnect the teleconference. Okay. Are we back,<br/>     24 Your Honor?</p> <p>25 THE SPECIAL MASTER: We were off for a</p> |
| <p style="text-align: right;">Page 103</p> <p>1 call with Mr. Donziger and I think they're reflected<br/>     2 in the upper half of 4011.</p> <p>3 But then when Michael and I or Michael,<br/>     4 Ericka and I talked, I believe immediately after our<br/>     5 call with Mr. Donziger, I raised those three issues<br/>     6 with Mr. Hoke and Ms. Englert.</p> <p>7 Q Let me direct your attention back to<br/>     8 Exhibit 4000, if I might, which is the invoice. And<br/>     9 I just want to -- this may -- I think maybe the<br/>     10 record is a little unclear based on my poor<br/>     11 questioning.</p> <p>12 If I could direct your attention to<br/>     13 page 15 of 18. There's a time entry for Ericka<br/>     14 Englert on March 18th reflecting a telephone<br/>     15 conversation with Mr. Schindler -- Shinder misspelled<br/>     16 -- leading to the next page of a conversation with<br/>     17 Mr. Donziger on 19 March, leading to another<br/>     18 conversation with Mr. Shinder on 19 March.</p> <p>19 Do you recall that there were, in fact,<br/>     20 two conversations with Mr. Shinder, one before this<br/>     21 conversation with Mr. Donziger, and one after?</p> <p>22 A I think -- I think that's accurate because<br/>     23 I recall for some reason -- for some reason, I felt<br/>     24 like we had to get Donziger's, Mr. Donziger's<br/>     25 approval to talk to Mr. Shinder because of some of</p> | <p style="text-align: right;">Page 105</p> <p>1 bit. But I still was confused by the questioning<br/>     2 there.</p> <p>3 MR. BLUME: And I'll try to be clear.</p> <p>4 THE SPECIAL MASTER: Break it up.</p> <p>5 MR. BLUME: Sure.</p> <p>6 Q (BY MR. BLUME) According to your time<br/>     7 sheets, there was an initial call with Mr. Shinder<br/>     8 and then a call with Mr. Donziger and then another<br/>     9 call with Mr. Shinder. Is that how you recall it<br/>     10 happening?</p> <p>11 A That's my recollection now after reviewing<br/>     12 this material.</p> <p>13 Q Okay.</p> <p>14 A Material being 4000, 4011.</p> <p>15 Q Because at the bottom of 4011 it reflects<br/>     16 a note that says, Anything untoward? Need to talk to<br/>     17 Shinder. E-mail to Steven to get okay to talk to<br/>     18 Shinder. Let Steven know will forward to Jeff.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And that reflects your requesting of<br/>     22 Mr. Donziger permission to speak to Mr. Shinder about<br/>     23 his concerns, again; isn't that right?</p> <p>24 A Yes.</p> <p>25 Q Okay. And then you had that conversation</p>   |

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| <p style="text-align: right;">Page 106</p> <p>1 on March 19th with Mr. Shinder in which he revealed<br/>2 in more detail his concerns; isn't that right?<br/>3 A That's my recollection.<br/>4 Q And it was in that conversation on<br/>5 March 19th, was it not, that you learned that<br/>6 Mr. Shinder was actually withdrawing from his<br/>7 representation; is that correct?<br/>8 A I'm not sure whether that was the first or<br/>9 second call.<br/>10 Q Okay.<br/>11 A There's a part of me that thinks the<br/>12 reason we felt like we had to ask Mr. Donziger for<br/>13 permission is that maybe Shinder had already<br/>14 withdrawn. And therefore, there might be a concern<br/>15 with a privilege waiver if I spoke to Shinder after<br/>16 he had withdrawn.<br/>17 And so maybe I felt like I had to get<br/>18 Donziger's permission.<br/>19 Q Okay. But suffice to say during the<br/>20 period in and around March 18th and 19th, 2010, you<br/>21 had conversations with Mr. Shinder in which you<br/>22 learned information which was inconsistent with what<br/>23 you had previously learned from Mr. Donziger about<br/>24 Stratus's role in Ecuador; is that correct?<br/>25 A Yes.</p>  | <p style="text-align: right;">Page 108</p> <p>1 Q Okay. Is it possible -- well, do you know<br/>2 whether or not either Ms. Englert or Mr. Hoke met<br/>3 with Mr. Donziger?<br/>4 A I don't.<br/>5 Q Is it fair to say that if those meetings<br/>6 occurred, they would be most likely reflected in the<br/>7 invoice that is Exhibit 4000 in this case?<br/>8 A Yes.<br/>9 Q Okay. And if I could get tab 17, please.<br/>10 (Exhibit 4013 marked.)<br/>11 Q (BY MR. BLUME) And while we're doing<br/>12 that, if I could direct your attention on<br/>13 Exhibit 4000 to an entry on page 8 of 18, which is a<br/>14 time entry for February 24th in which Mr. Hoke<br/>15 indicates a conference with Ericka Englert and<br/>16 S. Donziger re case strategy and issues.<br/>17 Do you recall learning about a conference<br/>18 in and around February 24th, 2010 between<br/>19 Mr. Donziger and your team?<br/>20 A I'm sorry, I just don't remember that.<br/>21 Q Okay. And let me place before you<br/>22 Exhibit 4013. And that's without -- you're free to<br/>23 look through the substance, but ask whether or not<br/>24 you recognize the handwriting on that exhibit?<br/>25 A No.</p> |
| <p style="text-align: right;">Page 107</p> <p>1 Q Okay. Prior to March of 2010, do you<br/>2 recall how many times you had actually met with<br/>3 Mr. Donziger about your efforts in Colorado?<br/>4 A You know, I was thinking about this last<br/>5 night. I don't know if I ever met with Mr. Donziger.<br/>6 If I did, it was, you know, once, maybe. I just<br/>7 don't -- once or twice. I honestly, I can't even<br/>8 visualize him.<br/>9 Q Okay. Let me just show you something,<br/>10 perhaps refresh your recollection, tab 14<br/>11 (Exhibit 4012 marked.)<br/>12 MR. BLUME: And I'll mark this as<br/>13 Exhibit 4012. Which comes out of -- which has a<br/>14 Bates number of Woods-HDD-0007981 and purports to be<br/>15 an e-mail to file from Mr. Donziger, dated<br/>16 4 February 2010, reflecting Miami, Florida and<br/>17 Boulder, Colorado trip expenses from January 27<br/>18 to 30, 2010.<br/>19 I show that to you because your name is<br/>20 mentioned and ask you only if it refreshes your<br/>21 recollection as to whether you may have met with<br/>22 Mr. Donziger in or around the end of January of 2010.<br/>23 A It doesn't. I'm not saying I didn't meet<br/>24 with him, but I don't have any recollection of ever<br/>25 meeting with him.</p> | <p style="text-align: right;">Page 109</p> <p>1 Q Okay. It's dated February 24, 2010, with<br/>2 the case number in the upper left-hand corner.<br/>3 Would it be reasonable to assume that<br/>4 this -- and it says meeting with S. Donziger and<br/>5 Ericka Englert.<br/>6 Is it fair to assume from the time entries<br/>7 that these are Mr. Hoke's notes from that meeting as<br/>8 reflected in Exhibit 4000?<br/>9 A Yes.<br/>10 Q And these are notes that Mr. Hoke and your<br/>11 firm kept in the ordinary course of business?<br/>12 A Yes.<br/>13 Q And it would be the ordinary course of the<br/>14 business at the Brownstein firm to keep such notes?<br/>15 A Yes.<br/>16 Q There is at the bottom of Bates No. BHFS<br/>17 49, there's a note that says, One meeting between<br/>18 Stratus and Cabrera. It goes on to say, Can we<br/>19 allege Chevron's experts also had such contact?<br/>20 Do you remember -- do you have any<br/>21 recollection of a discussion with either Mr. Hoke,<br/>22 Ms. Englert or Mr. Donziger about that specific point<br/>23 in and around the end of February 2010?<br/>24 A No.<br/>25 Q Okay. Direct your attention to Bates No.</p>        |

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| <p style="text-align: right;">Page 110</p> <p>1 BHFS 51. There is initials, EHE.<br/>     2 Do you see that?<br/>     3 A Yes.<br/>     4 Q And do you recognize that, those initials<br/>     5 to be -- I'm sorry, EH -- I'm sorry, EFE, I think.<br/>     6 Do you recognize that to be Ericka Englert?<br/>     7 A I suspect it is.<br/>     8 Q And it says, Does Cabrera use Chevron<br/>     9 info? SD: Yes.<br/>     10 Do you see that?<br/>     11 A Yes.<br/>     12 Q Do you recall looking at that, those<br/>     13 series of notes, do you recall having a discussion<br/>     14 with Ms. Englert or Mr. Hoke or Mr. Donziger about<br/>     15 anything reflected in those notes?<br/>     16 A What I remember is, as I recall,<br/>     17 Mr. Donziger was making an argument that to the<br/>     18 extent that there were -- to the extent that there<br/>     19 were communications between Cabrera and our<br/>     20 Ecuadorian clients, there were similar contacts<br/>     21 between Mr. Cabrera and Chevron or Chevron's experts.<br/>     22 And that was permissible.<br/>     23 Q Okay.<br/>     24 A So qualitatively, the context didn't<br/>     25 differ.</p>   | <p style="text-align: right;">Page 112</p> <p>1 19, please.<br/>     2 (Exhibits 4014 and 4015 marked.)<br/>     3 Q (BY MR. BLUME) I'll place before you what<br/>     4 is marked as Exhibit 4011 -- I'm sorry, 4014. And<br/>     5 that is Bates No. DONZ 00053758, a two-page e-mail,<br/>     6 the most recent of which is January 28th, 2010, in<br/>     7 which, during this chain Mr. Donziger provides to you<br/>     8 a provision of Ecuadorian civil code.<br/>     9 Let me just ask you, is this e-mail -- was<br/>     10 this e-mail such that was it was kept in the ordinary<br/>     11 course of the Brownstein firm's business?<br/>     12 A Yes.<br/>     13 Q And would it be the ordinary course of<br/>     14 business at the Brownstein firm to keep such an<br/>     15 e-mail?<br/>     16 A Yes.<br/>     17 Q And is this -- do you remember receiving<br/>     18 this e-mail?<br/>     19 A No.<br/>     20 Q Okay. Do you remember asking Mr. Donziger<br/>     21 for specific provisions of Ecuadorian civil code?<br/>     22 A Yes.<br/>     23 Q And this is about a topic about the<br/>     24 closing of the evidentiary period in Lago. Do you<br/>     25 remember that being a point of discussion between you</p>          |
| <p style="text-align: right;">Page 111</p> <p>1 Q All right.<br/>     2 A I assume that's what they were talking<br/>     3 about here.<br/>     4 Q And do you recall in and around the end of<br/>     5 February 2010 whether or not Mr. Donziger told you or<br/>     6 any member of your team about Stratus's efforts to<br/>     7 write any portion of the Cabrera report?<br/>     8 MR. GOMEZ: Objection. Privilege.<br/>     9 THE SPECIAL MASTER: Overruled. Let's<br/>     10 hear the substance of it and then I may add crime<br/>     11 fraud.<br/>     12 A I don't recall -- I don't recall<br/>     13 Mr. Donziger telling us that Stratus wrote a portion<br/>     14 of the Cabrera report.<br/>     15 THE SPECIAL MASTER: I add crime fraud.<br/>     16 Q (BY MR. BLUME) Is it fair to say,<br/>     17 Mr. McDermott, that both you and your associates<br/>     18 relied on Mr. Donziger to provide you the factual<br/>     19 information about the proceedings in Ecuador?<br/>     20 A Yes, either from he, Mr. Donziger, or as I<br/>     21 have testified previously, he indicated that he was<br/>     22 arranging for us to get affidavits or other factual<br/>     23 support from Ecuador.<br/>     24 Q Okay.<br/>     25 MR. BLUME: If I could have tabs 18 and</p> | <p style="text-align: right;">Page 113</p> <p>1 and Mr. Donziger?<br/>     2 A Yes.<br/>     3 Q Okay. Do you recall whether Mr. Donziger<br/>     4 ever sent to you any provision of the Ecuadorian code<br/>     5 regarding contact with court-appointed experts?<br/>     6 A I don't recall one way or another.<br/>     7 Q Okay. Let me place before you what is<br/>     8 marked as 4015. This is an e-mail from Mr. Donziger<br/>     9 to you, Mr. Hoke and Ms. Englert, dated 22 February,<br/>     10 Donziger production 114910. It's a two-page e-mail.<br/>     11 And in all caps up top, Mr. -- and is this<br/>     12 an e-mail that would be kept by the Brownstein firm<br/>     13 in the ordinary course of its business?<br/>     14 A Yes.<br/>     15 Q And would it be the ordinary course of the<br/>     16 Brownstein firm to keep such an e-mail related to<br/>     17 client matters?<br/>     18 A Yes.<br/>     19 Q On the top there is an all bolded<br/>     20 paragraph addressed to you, Ericka and Michael.<br/>     21 Do you see that?<br/>     22 A Yes.<br/>     23 Q And it says, Below is the beginning of our<br/>     24 memo that outlines possible legal arguments to block<br/>     25 Chevron's 1782 application.</p> |

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| <p style="text-align: right;">Page 114</p> <p>1        Do you see that?</p> <p>2    A    Yes.</p> <p>3    Q    It goes on to say, Will send full memo<br/>4 with factual and other issues by tomorrow.</p> <p>5        Did you rely on Mr. Donziger to provide<br/>6 you the sum and substance of the memorandum, that he<br/>7 wanted to file in opposition to Chevron's 1782<br/>8 petition?</p> <p>9        MR. GOMEZ: Object. Privileged.</p> <p>10      THE SPECIAL MASTER: Let me look at that<br/>11 again.</p> <p>12      Overruled. Waiver. Yeah.</p> <p>13    A    Well, let me answer --</p> <p>14    THE SPECIAL MASTER: Please answer the<br/>15 question.</p> <p>16    THE DEPONENT: All right. Thank you, Your<br/>17 Honor.</p> <p>18    A    Let me answer it this way. We, Brownstein<br/>19 lawyers, had our responsibilities to the Court,<br/>20 Rule 11 and otherwise.</p> <p>21      So ultimately if we signed a document with<br/>22 the Court, it's our responsibility. But Mr. Donziger<br/>23 was our principal support -- was our principal source<br/>24 for what we anticipated we would ultimately put in<br/>25 whatever we filed with the Court.</p> | <p style="text-align: right;">Page 116</p> <p>1 of money. And we knew that we had to be efficient<br/>2 and that he made it clear, understandably, that he<br/>3 wanted to know precisely what was going on and what<br/>4 we were going to be doing, all understandable.</p> <p>5        It did not seem odd to me. And so we<br/>6 prepared this work plan, we being primarily Michael<br/>7 and Ericka, prepared this work plan and sent it to<br/>8 Mr. Donziger.</p> <p>9    Q    Let me direct your attention to page 2 of<br/>10 that memo under the heading from Donziger's team.<br/>11 The sixth bullet down it says, Documents that could<br/>12 be ultimate source for materials Chevron alleges show<br/>13 improper contact between Cabrera and Stratus.</p> <p>14      Do you see that sub bullet?</p> <p>15    A    Yes.</p> <p>16    Q    Example, court filings or other public<br/>17 cost documents containing the same figures regarding<br/>18 the use of lower TPH standards such as that found in<br/>19 mediation materials.</p> <p>20      Do you recall ever receiving information<br/>21 from Mr. Donziger that --</p> <p>22      (Mr. Mastro joined the video conference<br/>23 from New York office.)</p> <p>24    THE SPECIAL MASTER: Mr. Blume, I'm going<br/>25 to interrupt to state for the record that Randy</p> |
| <p style="text-align: right;">Page 115</p> <p>1    Q    (BY MR. BLUME) And at any point in time,<br/>2 did you -- well, strike that.</p> <p>3    MR. BLUME: If I could have tab 20,<br/>4 please.</p> <p>5        (Exhibit 4016 marked.)</p> <p>6    Q    (BY MR. BLUME) I place before you,<br/>7 Mr. McDermott, Exhibit No. 4016. This is a<br/>8 memorandum on Brownstein Hyatt Farber &amp; Schreck<br/>9 letterhead, dated 26 February 2010 to Steven<br/>10 Donziger, copied to Ericka Englert; from Michael<br/>11 Hoke.</p> <p>12      Do you see that?</p> <p>13    A    Yes.</p> <p>14    Q    Is this a memorandum that was kept in the<br/>15 ordinary course of business at the Brownstein firm?</p> <p>16    A    Yes.</p> <p>17    Q    And would it be the ordinary course of<br/>18 business of the Brownstein firm to keep such a<br/>19 record?</p> <p>20    A    Yes.</p> <p>21    Q    Do you recognize this document?</p> <p>22    A    Yes.</p> <p>23    Q    What do you recognize it to be?</p> <p>24    A    Well, I just -- I recall that -- I mean,<br/>25 we were on -- we knew Mr. Donziger didn't have a lot</p>  | <p style="text-align: right;">Page 117</p> <p>1 Mastro has just walked into the room. If you look<br/>2 this way, you'll see him.</p> <p>3    MR. BLUME: Mr. Mastro, Mr. Treece,<br/>4 counsel for John McDermott, the Brownstein firm, and<br/>5 John McDermott, the witness.</p> <p>6    MR. MASTRO: Mr. McDermott.</p> <p>7    MR. BLUME: Mr. Mastro is my partner from<br/>8 New York.</p> <p>9    Q    (BY MR. BLUME) Do you recall at any point<br/>10 in time, referring to bullet 6 on page 2 of the<br/>11 memorandum you prepared, the work plan, do you have<br/>12 any recollection of receiving any documents that<br/>13 satisfied you that there was an alternate source for<br/>14 materials Chevron alleged showed improper contact<br/>15 between Cabrera and Stratus?</p> <p>16    A    No.</p> <p>17    Q    Directing your attention down to the next<br/>18 section, B, draft opposition brief. It says, Fact<br/>19 section and it has a bracket, A. Woods, S. Donziger,<br/>20 E. Englert, M. Hoke.</p> <p>21      Michael Hoke and Ericka Englert work for<br/>22 the Brownstein firm, that's correct, right?</p> <p>23    A    They did. At the time Mr. Hoke still<br/>24 does, Mrs. Englert does not.</p> <p>25    Q    Right. Did you rely, and did you and your</p>  |

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| <p style="text-align: right;">Page 118</p> <p>1 team rely exclusively on Mr. Donziger and Mr. Woods<br/>2 to provide the facts necessary to support the<br/>3 opposition brief in the 1782 action?</p> <p>4 A Well, I --</p> <p>5 MR. GOMEZ: Objection. Privilege.</p> <p>6 THE SPECIAL MASTER: Overruled.</p> <p>7 A I mean, I don't want to quibble. You used<br/>8 the word exclusive. We certainly relied primarily to<br/>9 an overwhelming extent on them. But presumably we<br/>10 would have documents that would permit us to play<br/>11 some role in the fact section of the brief.</p> <p>12 But, yes, Mr. Donziger and his office<br/>13 were, were our principal source of information.</p> <p>14 Q (BY MR. BLUME) Okay. And then under<br/>15 other tasks, C, the second bullet says, Draft and<br/>16 prepare affidavit of Peter Jones.</p> <p>17 Do you recall who Peter Jones is?</p> <p>18 A No.</p> <p>19 Q In the parenthetical, it says, Narrow -<br/>20 just established no contact with Cabrera prior to<br/>21 report, scope of work with Stratus, et cetera.</p> <p>22 Do you recall ever receiving an affidavit<br/>23 from anyone detailing the actual, true scope of work<br/>24 that Stratus did in Ecuador?</p> <p>25 A I can't be certain, but I don't believe we</p> | <p style="text-align: right;">Page 120</p> <p>1 MR. GOMEZ: Objection. Form.<br/>2 THE SPECIAL MASTER: Hold on a second.<br/>3 The form is fine.</p> <p>4 THE DEPONENT: Could somebody repeat it to<br/>5 me?</p> <p>6 Q (BY MR. BLUME) Sure.</p> <p>7 A I'm sorry.</p> <p>8 Q Do you recall receiving any information in<br/>9 response to your work plan -- and let me be more<br/>10 specific.</p> <p>11 Do you recall receiving from Mr. Donziger<br/>12 any facts in response to requests for such facts as<br/>13 set forth in your work plan?</p> <p>14 A I can't be certain about that.</p> <p>15 MR. GOMEZ: Objection. Form.</p> <p>16 A I would be -- I guess I would be<br/>17 surprised --</p> <p>18 THE SPECIAL MASTER: Hold on. Objection<br/>19 overruled. Come on, wait a second. One person at a<br/>20 time.</p> <p>21 THE DEPONENT: I apologize.</p> <p>22 THE SPECIAL MASTER: No, no, not you,<br/>23 Mr. McDermott.</p> <p>24 Without the preamble, Mr. Blume, ask your<br/>25 question.</p>   |
| <p style="text-align: right;">Page 119</p> <p>1 ever received that. But I'm not certain.</p> <p>2 Q Okay. Is it fair to say, Mr. McDermott,<br/>3 that any information you would have received<br/>4 consistent with your work plan dated February 26,<br/>5 2010 regarding Stratus's role in Ecuador was<br/>6 inconsistent with what you heard from Mr. Shinder<br/>7 during your March 2010 telephone conversation?</p> <p>8 A Could you repeat that or read it back?</p> <p>9 Q Sure.</p> <p>10 A Please.</p> <p>11 Q Is it fair to say that any information you<br/>12 would have received consistent with your work --</p> <p>13 THE SPECIAL MASTER: Hold on, that makes<br/>14 it -- the form is bad. I just noticed it.</p> <p>15 MR. BLUME: Okay.</p> <p>16 THE SPECIAL MASTER: Any information you<br/>17 would have received.</p> <p>18 MR. BLUME: Very good. Fair enough, thank<br/>19 you, Your Honor.</p> <p>20 THE SPECIAL MASTER: It's a hypothetical<br/>21 question.</p> <p>22 Q (BY MR. BLUME) Is it fair to say that --<br/>23 did you receive any information in response to your<br/>24 request as set forth in your work plan dated<br/>25 February 26, 2010?</p>  | <p style="text-align: right;">Page 121</p> <p>1 Q (BY MR. BLUME) Do you recall receiving --</p> <p>2 THE SPECIAL MASTER: You can just read it<br/>3 off of the LiveNote.</p> <p>4 MR. BLUME: As I am.</p> <p>5 Q (BY MR. BLUME) Do you recall receiving<br/>6 from Mr. Donziger any facts in response to requests<br/>7 for such facts that were set forth in your<br/>8 February 26 work plan?</p> <p>9 A I don't know. I guess I would be<br/>10 surprised if he didn't send us something, but he<br/>11 didn't send us much. And he didn't send us anything<br/>12 that would permit us -- that gave me any comfort that<br/>13 I could make any representations to Judge Kane.</p> <p>14 Q Okay.</p> <p>15 MR. BLUME: If I could turn -- if I could<br/>16 get tab 25, please.</p> <p>17 (Exhibits 4017-A and 4017-B marked.)</p> <p>18 Q (BY MR. BLUME) I place before you first<br/>19 what is marked as Exhibit 4017-A and also 4017-B.<br/>20 And I'll spare you reading 4017-B. You're obviously<br/>21 free to do so.</p> <p>22 4017-A purports to be an e-mail from<br/>23 Mr. Donziger to you, Mr. Hoke and Ms. Englert, dated<br/>24 20 February 2010, subject, article on Chevron case.</p> <p>25 Do you see that?</p> |

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| <p style="text-align: right;">Page 122</p> <p>1 A Yes.</p> <p>2 Q Do you recall receiving from Mr. Donziger<br/>3 in and around February 20th, 2010 a near final draft<br/>4 of an academic essay on the Lago case?</p> <p>5 A I have a faint recollection of receiving<br/>6 an article from Mr. Donziger.</p> <p>7 Q And in his cover e-mail to you -- and this<br/>8 is an e-mail to you which would have been kept in the<br/>9 ordinary course at the Brownstein firm?</p> <p>10 A Yes.</p> <p>11 Q And it would have been in the ordinary<br/>12 course of business at the Brownstein firm to keep<br/>13 such an e-mail?</p> <p>14 A Yes.</p> <p>15 Q The e-mail received from Mr. Donziger<br/>16 suggests that this essay, quote, in the first line,<br/>17 Provides some of the background of the 17 years of<br/>18 litigation and does a moderately decent job of<br/>19 documenting Chevron's abusive litigation tactics of<br/>20 which the action you are handling is a component in<br/>21 our view.</p> <p>22 Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Do you recall why -- well, do you recall<br/>25 having conversations -- whether Mr. Donziger told you</p>  | <p style="text-align: right;">Page 124</p> <p>1 Q I'm sorry, 4017-B.</p> <p>2 A I'm sorry, what page?</p> <p>3 Q Page 2 of 20. Bates No. DONZ 00019558,<br/>4 page 2 of 20.</p> <p>5 A Yes.</p> <p>6 Q If I can direct your attention to the<br/>7 second full paragraph, the last sentence, which says,<br/>8 quote, The communities operate under a more<br/>9 terrifying calculus: More than 1,400 cancer deaths<br/>10 due to oil contamination and near constant exposure<br/>11 to cancer causing oil hydrocarbons, resulting in<br/>12 damages of up to U.S. \$27.3 billion, according to a<br/>13 neutral court appointed special master.</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And did you understand from your<br/>17 conversation with Mr. Donziger that that so-called<br/>18 neutral court-appointed special master was Richard<br/>19 Cabrera?</p> <p>20 A I'm sorry, I don't recall discussing this<br/>21 particular sentence or the topic in that sentence.</p> <p>22 Q Do you recall any conversation with<br/>23 Mr. Donziger in and around this time about the<br/>24 neutral court-appointed special master being Richard<br/>25 Cabrera?</p>  |
| <p style="text-align: right;">Page 123</p> <p>1 whether or not, or explained to you the reasons for<br/>2 providing this essay, among other materials?</p> <p>3 MR. GOMEZ: Objection. Form.</p> <p>4 THE SPECIAL MASTER: It's not great, but<br/>5 I'll let it go, so we can leave early enough.</p> <p>6 A I don't recall specifically what he said<br/>7 about this article. I mean, it was clear to me from<br/>8 Googling Mr. Donziger that there was a public<br/>9 relations aspect to his efforts, which, you know, is<br/>10 not necessarily a bad thing. And I suspect I<br/>11 viewed -- I suspect I viewed this as part of his<br/>12 public relations, certainly nothing I could rely<br/>13 upon.</p> <p>14 Q (BY MR. BLUME) Do you -- did Mr. Donziger<br/>15 tell you whether he wanted you to rely on the facts<br/>16 as set forth in this article?</p> <p>17 A Oh, well --</p> <p>18 MR. GOMEZ: Objection. Privilege.</p> <p>19 THE SPECIAL MASTER: Oh, no, overruled.</p> <p>20 A Well, I interpret 4017-A as him telling us<br/>21 that.</p> <p>22 Q (BY MR. BLUME) And if I could direct your<br/>23 attention to page -- to the Exhibit 2017-B (sic),<br/>24 page 2 of 20, which is the article itself?</p> <p>25 A 4017-B.</p> | <p style="text-align: right;">Page 125</p> <p>1 A Yes -- well, I remember -- I remember a<br/>2 number of discussions with Mr. Donziger where he<br/>3 talked about Cabrera as the court-appointed special<br/>4 master.</p> <p>5 I don't recall a specific discussion with<br/>6 Mr. Donziger where he talked about Cabrera as the<br/>7 court-appointed special master, in the context of<br/>8 this sentence.</p> <p>9 Q Okay. And at any point in time, in and<br/>10 around --</p> <p>11 THE SPECIAL MASTER: Hold on a second.<br/>12 Hold on a second. Mr. Blume, stop.</p> <p>13 I'm adding to the grounds for the<br/>14 overruling of the privilege objection a little while<br/>15 ago, the crime fraud ground. This is very similar,<br/>16 that is the portion that you just read from this<br/>17 document that was sent by Mr. Donziger, the cover of<br/>18 4017-A, is very similar to the document we looked at<br/>19 earlier as to which I said satisfied furtherance of<br/>20 the fraud prong of the crime fraud exception.</p> <p>21 So I now add crime fraud exception to the<br/>22 reasons for overruling the privilege objection.</p> <p>23 MR. BLUME: Thank you, Your Honor.</p> <p>24 Q (BY MR. BLUME) If I could turn to tab 27,<br/>25 please.</p> |

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| <p style="text-align: right;">Page 126</p> <p>1 (Exhibits 4018-A and 4018-B marked.)</p> <p>2 Q (BY MR. BLUME) I'm handing you two</p> <p>3 documents, one Bates labeled WOODS-HDD-0213656</p> <p>4 labeled Exhibit 4018-A, and WOODS-HDD-0213657 to 62,</p> <p>5 labeled 4018-B.</p> <p>6 A being an e-mail from Mr. Woods dated</p> <p>7 1 March 2010 to Ericka Englert, copy Steven Donziger.</p> <p>8 Subject, Road map memo.</p> <p>9 And B being a memo from Steven Donziger</p> <p>10 regarding litigation relating to Chevron</p> <p>11 contamination in Ecuador.</p> <p>12 Do you see those?</p> <p>13 A Yes.</p> <p>14 Q And were these e-mails and the attachment</p> <p>15 sent to Ms. Englert, would it be the ordinary course</p> <p>16 of business of the Brownstein firm to maintain these</p> <p>17 e-mails and attachments in its files?</p> <p>18 A Yes.</p> <p>19 Q And was this in fact maintained in the</p> <p>20 ordinary course of business at the Brownstein firm?</p> <p>21 A Yes.</p> <p>22 Q Do you recall reviewing this memo 4018-B</p> <p>23 sent by Mr. Donziger about the litigations related to</p> <p>24 the Chevron contamination in Ecuador?</p> <p>25 A Yes, I do remember reviewing this. As I</p>  | <p style="text-align: right;">Page 128</p> <p>1 before for overruling the privilege objection.</p> <p>2 Q (BY MR. BLUME) Do you recall whether or</p> <p>3 not Mr. Donziger --</p> <p>4 THE SPECIAL MASTER: Excuse me, I left</p> <p>5 something out. The reference on the first page of</p> <p>6 that document, again, is to Mr. Cabrera and his</p> <p>7 alleged work to reach the conclusions he reached.</p> <p>8 Go on. I'm sorry, Mr. Blume.</p> <p>9 MR. BLUME: Sure.</p> <p>10 Q (BY MR. BLUME) In and around March 1st,</p> <p>11 2010 when Mr. Woods sent this document on behalf of</p> <p>12 Mr. Donziger, do you recall Mr. Donziger ever telling</p> <p>13 you separately that the Stratus firm ghostwrote</p> <p>14 portions of the special master Cabrera's report as</p> <p>15 referenced in page 1 of the memo?</p> <p>16 MR. GOMEZ: Objection. Asked and</p> <p>17 answered.</p> <p>18 THE SPECIAL MASTER: It was. He's right.</p> <p>19 Objection is sustained.</p> <p>20 MR. BLUME: Tab 20 --</p> <p>21 THE DEPONENT: You're saying on page 1 --</p> <p>22 MR. BLUME: No, he sustained the</p> <p>23 objection.</p> <p>24 THE DEPONENT: Okay.</p> <p>25 MR. BLUME: So you're fine.</p>  |
| <p style="text-align: right;">Page 127</p> <p>1 sit here today, I don't recall much about it, but I</p> <p>2 do recall reviewing it.</p> <p>3 Q And do you recall whether Mr. Donziger --</p> <p>4 do you recall what use Mr. Donziger told you to make</p> <p>5 of this memorandum?</p> <p>6 MR. GOMEZ: Objection. Privilege.</p> <p>7 THE SPECIAL MASTER: Hold on a second.</p> <p>8 Overruled. So far only the waiver.</p> <p>9 A Well, for one if not two purposes. Number</p> <p>10 one, my recollection is that we were going to use</p> <p>11 4018-B for our court filings. And second, I have a</p> <p>12 recollection that I appeared in court once in this</p> <p>13 case.</p> <p>14 I don't remember what it was for, but I</p> <p>15 just -- I thought we appeared in front of Judge Kane.</p> <p>16 And I can remember asking for information from</p> <p>17 Mr. Donziger so I could get prepared for that</p> <p>18 conference.</p> <p>19 THE SPECIAL MASTER: Okay. It's clear</p> <p>20 from the very first page of 4018-B and the witness'</p> <p>21 testimony as to the use that was supposed to be --</p> <p>22 for which this 4018-B was to be put, that it was to</p> <p>23 be used for purposes of court filings or court</p> <p>24 appearances. Therefore, it's furtherance of the</p> <p>25 fraud to that extent, as well as the ground I stated</p> | <p style="text-align: right;">Page 129</p> <p>1 Tab 28, please.</p> <p>2 (Exhibits 4019-A and 4019-B marked.)</p> <p>3 Q (BY MR. BLUME) I'll hand you what has</p> <p>4 been marked as Exhibit 4019-A and 4019-B, which are</p> <p>5 Donziger production 0005448 and 5449.</p> <p>6 4019-A is an e-mail from the next day,</p> <p>7 March 2nd, 2010, in which Ericka Englert writes to</p> <p>8 Steven Donziger and Andrew Woods copying Michael Hoke</p> <p>9 and attaching a fact outline for Chevron briefing.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And do you recall -- do you recall this</p> <p>13 e-mail or the attached outline for fact section of</p> <p>14 brief in opposition to Chevron's 1782 petition?</p> <p>15 A I'm sorry, I would be surprised if I</p> <p>16 didn't see this, but I don't have any recollection as</p> <p>17 we sit here.</p> <p>18 Q Okay. And were e-mails like this and</p> <p>19 outlines for fact sections of brief like the one</p> <p>20 attached in this Exhibit 4019-B, kept in the ordinary</p> <p>21 course of Brownstein's business?</p> <p>22 A Yes.</p> <p>23 Q And was it the ordinary course of the</p> <p>24 business at Brownstein to keep such documents?</p> <p>25 A Yes.</p> |

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| <p style="text-align: right;">Page 130</p> <p>1 Q Directing your attention to 4019-B, the<br/>2 outline for the fact section, section b talks about<br/>3 rules governing ex parte contact, okay.<br/>4 Do you see that?<br/>5 A 2 small b?<br/>6 Q Yes.<br/>7 A Yes.<br/>8 Q Was that part of the information that you<br/>9 were expecting to receive from Mr. Donziger?<br/>10 A Yes.<br/>11 Q Did you ever receive that information?<br/>12 A I don't believe so.<br/>13 Q Towards the bottom of Section 2F sub 3, it<br/>14 says, Explain how the standard of cleanup info ended<br/>15 up in Cabrera report.<br/>16 Do you see that?<br/>17 A I'm sorry, I don't.<br/>18 Q 2F sublet 3, very last sentence on the<br/>19 first page?<br/>20 A Got it.<br/>21 Q Do you see that?<br/>22 A Yes.<br/>23 Q Was that explanation one that you expected<br/>24 to receive from Mr. Donziger?<br/>25 A I'm sorry, I don't remember F3.</p>   | <p style="text-align: right;">Page 132</p> <p>1 MR. BLUME: The question is --<br/>2 THE SPECIAL MASTER: It would be good<br/>3 if -- I was about to say something. It would be good<br/>4 if the objections preceded the answer as opposed to<br/>5 following the answer or being uttered at the same<br/>6 time as the answer. I'm not sure how to -- and I'm<br/>7 laughing because I'm not sure how to accomplish that<br/>8 and get us out of here today at a reasonable hour.<br/>9 Okay.<br/>10 Q (BY MR. BLUME) On the question of how --<br/>11 THE SPECIAL MASTER: So just ignore my<br/>12 remark.<br/>13 Go ahead.<br/>14 Q (BY MR. BLUME) On the question of how the<br/>15 standard of cleanup info ended up in the Cabrera<br/>16 report, did your meeting with Mr. Shinder eventually<br/>17 shed some light as to how that standard ended up in<br/>18 the report?<br/>19 A I don't recall talking -- I don't recall<br/>20 talking to Shinder about the standard of cleanup. My<br/>21 takeaway from Shinder was as referenced in previous<br/>22 exhibits. It was more general.<br/>23 Q Okay. Let me turn to tab 29. And when<br/>24 you say more general, more general in the sense of a<br/>25 more general discussion as you mentioned of Stratus's</p> |
| <p style="text-align: right;">Page 131</p> <p>1 Q You don't remember that topic?<br/>2 A I just don't remember that topic.<br/>3 Q Okay. Do you recall at any point in time<br/>4 during your representation from January to March<br/>5 receiving an explanation from Mr. Donziger about how<br/>6 the standard of cleanup information ended up in<br/>7 Cabrera's report?<br/>8 A No, I just don't remember the topic.<br/>9 MR. GOMEZ: Objection --<br/>10 Q (BY MR. BLUME) Okay. Do you recall --<br/>11 THE SPECIAL MASTER: Over -- the objection<br/>12 is overruled.<br/>13 Q (BY MR. BLUME) Did your conversation<br/>14 with -- ultimately, with Mr. Shinder, shed some light<br/>15 on that topic, as you recall?<br/>16 A The standard --<br/>17 MR. GOMEZ: Objection. Asked and<br/>18 answered.<br/>19 MR. BLUME: No, I'm sorry. Is there an<br/>20 objection?<br/>21 THE SPECIAL MASTER: Let me hear the<br/>22 answer first. The question -- the objection is<br/>23 overruled on the waiver ground, for sure. It's a<br/>24 form objection. Oh, I thought I heard a privilege<br/>25 objection.</p> | <p style="text-align: right;">Page 133</p> <p>1 role in -- or involvement in the Cabrera report.<br/>2 Is that what you mean?<br/>3 A Yes.<br/>4 Q Okay.<br/>5 MR. BLUME: Your Honor, we actually just<br/>6 have a few more documents to get through. So I<br/>7 appreciate your indulgence.<br/>8 (Exhibits 4020-A and 4020-B marked.)<br/>9 Q (BY MR. BLUME) I'll hand you what's again<br/>10 in two parts, 4020-A and 4020-B, the first of which<br/>11 is an e-mail from Aaron Page to you, Ms. Englert and<br/>12 Mr. Hoke, copying Laura Garr and Steven Donziger,<br/>13 which attaches, purports to attach a memorandum on<br/>14 our current thinking on the matter we have discussed.<br/>15 Do you see that e-mail?<br/>16 A Yes.<br/>17 Q And it attaches a memorandum. Would it<br/>18 be -- did Brownstein and your team keep an e-mail<br/>19 like this and its memorandum in their ordinary course<br/>20 of its business?<br/>21 A Yes.<br/>22 Q And would it be the ordinary course of the<br/>23 Brownstein firm to maintain these in its client<br/>24 files?<br/>25 A Yes.</p>   |

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| <p style="text-align: right;">Page 134</p> <p>1 Q I think I asked you earlier, but let me<br/>2 ask you if this somehow refreshes your recollection<br/>3 as to who Laura Garr was or Aaron Marr Page?</p> <p>4 A Those names don't ring a bell with me.</p> <p>5 Q Let me direct your attention to the<br/>6 subsection B of the exhibit, Bates labeled<br/>7 DONZ 00054732, which is a three-page memorandum<br/>8 addressed to you, Ericka Englert and Michael Hoke.</p> <p>9 Do you see that?</p> <p>10 A I'm sorry, what am I looking at?</p> <p>11 Q It should be that right there. Dated<br/>12 March 9th, 2010.</p> <p>13 A Right. And I'm sorry, did you direct me<br/>14 to something --</p> <p>15 Q I actually direct your attention to it and<br/>16 ask you if you recall receiving and reviewing this<br/>17 memo on Denver section 1782 litigation strategy<br/>18 thoughts?</p> <p>19 A I have a faint recollection of getting<br/>20 4020-B.</p> <p>21 Q Okay.</p> <p>22 A Because I -- and what triggers it is that<br/>23 first paragraph. I remember a communication with<br/>24 these folks after they were either in Ecuador or they<br/>25 had significant communications with people in</p>   | <p style="text-align: right;">Page 136</p> <p>1 meet and confer with the Gibson attorneys.<br/>2 And they kept telling us they were going<br/>3 to give us the information, they were going to give<br/>4 us the information. I distinctly recall a point in<br/>5 time where they said, Mr. Donziger said they were<br/>6 going to Ecuador. They were going to gather<br/>7 information there and get back to us.<br/>8 And I believe that 4020-B is a part of<br/>9 that process, a product of that process.</p> <p>10 Q Let me direct your attention to page 2 of<br/>11 that memo, the third full paragraph beginning, In<br/>12 sum.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q If I could ask you just to read that to<br/>16 yourself.</p> <p>17 A Okay. I've read it.</p> <p>18 Q It begins, In sum, there are key points<br/>19 regarding the Cabrera report as we now understand it:<br/>20 And then it goes on to list --</p> <p>21 THE SPECIAL MASTER: These, these are the<br/>22 key points.</p> <p>23 MR. BLUME: Thank you, Your Honor.</p> <p>24 Q (BY MR. BLUME) These are the key points<br/>25 regarding the Cabrera report as we now understand it,</p>                 |
| <p style="text-align: right;">Page 135</p> <p>1 Ecuador. Because I know -- I know there was a time<br/>2 where we were waiting that Mr. Donziger, I believe,<br/>3 said he was in Ecuador gathering information, or<br/>4 somebody was in Ecuador gathering information.</p> <p>5 Q Did Mr. Donziger or someone working with<br/>6 Mr. Donziger tell you why they sent you this<br/>7 litigation strategy thoughts memo?</p> <p>8 A Well, yes, because we had been --</p> <p>9 MR. GOMEZ: Objection. Privilege.</p> <p>10 THE SPECIAL MASTER: Hold it, what?</p> <p>11 MR. GOMEZ: Objection. Privilege.</p> <p>12 THE SPECIAL MASTER: Overruled. And the<br/>13 grounds for the objection are waiver as well as the<br/>14 substance of what was conveyed by the Page e-mail.<br/>15 It clearly meets the furtherance of the crime of<br/>16 fraud prong as well as the fourth prong of the crime<br/>17 fraud exception.</p> <p>18 Q (BY MR. BLUME) The question was, did<br/>19 Mr. Donziger or someone working with Mr. Donziger<br/>20 tell you why they sent you this litigation strategy<br/>21 thoughts memo?</p> <p>22 A I don't recall any specific discussion<br/>23 about 4020-B, but they had repeatedly told us -- we<br/>24 had repeatedly told them that we needed information<br/>25 to permit us to make filings with the court and to</p> | <p style="text-align: right;">Page 137</p> <p>1 colon.</p> <p>2 Number one right away says, or A says, It<br/>3 was based on the evidence submitted at trial by both<br/>4 parties, and, in fact, was based largely on Chevron's<br/>5 evidence since they submitted the vast majority of<br/>6 chemical sampling results.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Is that consistent or inconsistent with<br/>10 what you learned during your conversation on<br/>11 March 19th with Mr. Shinder?</p> <p>12 A Well, let me answer it, I think it's<br/>13 inconsistent. Whatever Mr. Shinder told us was<br/>14 sufficiently inconsistent with what we had previously<br/>15 been told that I concluded we had an ethical<br/>16 obligation to withdraw from the case.</p> <p>17 Q And this memorandum that you're holding,<br/>18 Exhibit 201 --</p> <p>19 A 4020-B.</p> <p>20 Q Sorry, sorry. 4020-B. That's part and<br/>21 parcel of the information to which you referred when<br/>22 you said had previously been told; is that correct?</p> <p>23 A Correct.</p> <p>24 Q And again, this is -- the information that<br/>25 you had previously been told, is it fair to say that</p> |

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| <p style="text-align: right;">Page 138</p> <p>1 virtually all of the substance of the information<br/>2 that you had previously been told came directly from<br/>3 Mr. Donziger or someone working with Mr. Donziger?<br/>4 A Yes.<br/>5 MR. GOMEZ: This is Mr. Gomez. Could we<br/>6 get a reading of the time, please?<br/>7 THE SPECIAL MASTER: Sure.<br/>8 Mr. Videographer, can you please give us a reading of<br/>9 the time?<br/>10 THE VIDEOGRAPHER: Yeah, we've been<br/>11 3 hours 18 minutes on the record. And that's<br/>12 including when he wasn't here.<br/>13 MR. BLUME: Okay. And so we minus<br/>14 15 minutes from that, Your Honor.<br/>15 THE VIDEOGRAPHER: Three hours.<br/>16 THE SPECIAL MASTER: So 3 hours and<br/>17 3 minutes have been used up. You have 27 minutes to<br/>18 go, Mr. Blume.<br/>19 MR. BLUME: I'm right on --<br/>20 THE SPECIAL MASTER: Use them wisely.<br/>21 MR. BLUME: I'm right on schedule, Your<br/>22 Honor.<br/>23 Q (BY MR. BLUME) Do you recall that you<br/>24 actually made a -- or submitted a filing in this<br/>25 case?</p>  | <p style="text-align: right;">Page 140</p> <p>1 Frankly, I don't know that I had ever been<br/>2 involved in a 1782 petition. So it, as I recall, it<br/>3 was just a procedure that I was not familiar with.<br/>4 And so I'm certain that we did some legal analysis as<br/>5 to elements, et cetera.<br/>6 I mean, certainly, we relied upon the<br/>7 fact -- we relied upon Mr. Donziger for the facts.<br/>8 We relied upon him to the extent there was any<br/>9 discussion of Ecuadorian law. But I would -- I would<br/>10 doubt that we relied upon Mr. Donziger for any<br/>11 discussion of relevant Tenth Circuit or District of<br/>12 Colorado law.<br/>13 Q Okay. Let's turn to tab 33.<br/>14 (Exhibit 4022-A marked.)<br/>15 Q (BY MR. BLUME) I'll hand you what is<br/>16 marked as 4022-A, which is a cover e-mail dated<br/>17 March 4th, 2010. And the attachment to which, which<br/>18 is labeled 4022-B.<br/>19 (Exhibit 4022-B marked.)<br/>20 Q (BY MR. BLUME) And ask you, this is --<br/>21 the cover e-mail dated 4 March, 2010, Bates numbered<br/>22 DONZ 00031039. It's an e-mail from Mr. Donziger to<br/>23 you, Mr. Hoke and Ms. Englert, subject memo on<br/>24 Chevron matter.<br/>25 Do you recognize -- do you remember</p> |
| <p style="text-align: right;">Page 139</p> <p>1 A I was afraid you were going to say that.<br/>2 Q Well, let's go to tab 32.<br/>3 A No, I actually don't remember, but I'm not<br/>4 surprised.<br/>5 (Exhibit 4021 marked.)<br/>6 Q (BY MR. BLUME) I'll hand you what's<br/>7 marked as Exhibit 4021, which is a file stamped or<br/>8 docketed Motion for 30 Day Leave to File Brief in<br/>9 Opposition to Chevron's 28 U.S.C. Section 1782<br/>10 Petition in Case Number 1:10-CV-0047-JLK.<br/>11 Do you see that?<br/>12 A Yes.<br/>13 Q And that is -- that is a motion filed on<br/>14 behalf of the Lago Agrio plaintiffs by your firm<br/>15 requesting for an extension to file an opposition to<br/>16 Chevron's petition; is that correct?<br/>17 A Correct.<br/>18 Q And to prepare this motion, did you -- in<br/>19 preparing this motion, did you rely, as you mentioned<br/>20 earlier, on the facts and law that Mr. Donziger had<br/>21 provided you, up until and including March 3rd, 2010<br/>22 when this was filed?<br/>23 A Well, in part, but we would have done --<br/>24 we would have certainly done legal analysis as to --<br/>25 as to the basis for a 1782 petition.</p> | <p style="text-align: right;">Page 141</p> <p>1 receiving this e-mail?<br/>2 A Vaguely. And what triggers -- the reason<br/>3 I say that is that I recall his comment that he wants<br/>4 to make sure I know what we are doing. I just<br/>5 remember, I remember that comment by him.<br/>6 Q And just for the record, to what are you<br/>7 specifically referring?<br/>8 A That's in the first paragraph of 4022-A.<br/>9 Q What is it about that phrase that triggers<br/>10 a memory in your mind?<br/>11 A Well, I just remember getting -- I just<br/>12 remember getting a communication from Mr. Donziger<br/>13 where he says he wanted to make sure that I was in<br/>14 the loop. And I don't -- I don't know why I remember<br/>15 that. I don't know, but I do.<br/>16 Q And this, you referred earlier to<br/>17 Mr. Donziger's trip to Ecuador.<br/>18 Does this refresh your recollection that<br/>19 that trip to Ecuador took place sometime in the<br/>20 beginning of March 2010?<br/>21 A Yes.<br/>22 Q Okay. And was it the ordinary course of<br/>23 business at the Brownstein firm to maintain e-mails<br/>24 such as this and the attached memoranda?<br/>25 A Yes.</p>   |

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| <p style="text-align: right;">Page 142</p> <p>1 Q And were e-mails such as this and the<br/>2 attached memoranda kept in the ordinary course of<br/>3 business?</p> <p>4 A Yes.</p> <p>5 Q And was it your understanding that<br/>6 Mr. Donziger was sending you this memo on March 4th<br/>7 to provide you factual background and information to<br/>8 help you oppose Chevron's 1782 petition?</p> <p>9 A Yes.</p> <p>10 Q Do you recall the date of your court<br/>11 appearance before Judge Kane?</p> <p>12 A No.</p> <p>13 Q All right. Let me -- tab 34, please.<br/>(Exhibit 4023 marked.)</p> <p>15 Q (BY MR. BLUME) I'm placing before you<br/>16 what is marked as Exhibit 4023. It's an e-mail from<br/>17 you to Mr. Donziger, Mr. Hoke and Ms. Englert, dated<br/>18 4 March 2010, subject, summary of points for this<br/>19 morning's hearing.</p> <p>20 Take -- ask you a moment to just take a<br/>21 look at that and tell me if you recognize that as an<br/>22 e-mail you sent on that date.</p> <p>23 Do you recall sending that e-mail on<br/>24 March 4th, 2010?</p> <p>25 A If I could just have one more minute.</p>  | <p style="text-align: right;">Page 144</p> <p>1 A Yes.</p> <p>2 Q And was it the ordinary course of the<br/>3 Brownstein firm to keep such an e-mail?</p> <p>4 A Yes.</p> <p>5 MR. BLUME: If I could have tabs 36, 37,<br/>6 38 and 39, please.</p> <p>7 (Exhibit 4024 marked.)</p> <p>8 Q (BY MR. BLUME) I'm handing you what is<br/>9 marked as Exhibit 4024, which is an e-mail Bates<br/>10 labeled BHFS 276 on its cover.</p> <p>11 (Exhibit 4025 marked.)</p> <p>12 Q (BY MR. BLUME) 2025 (sic) is a Bates<br/>13 label DONZ 00054304.</p> <p>14 (Exhibit 4026 marked.)</p> <p>15 Q (BY MR. BLUME) 20 -- I'm sorry, 4026 is<br/>16 an e-mail chain Bates labeled DONZ 00054324.</p> <p>17 (Exhibit 4027 marked.)</p> <p>18 Q (BY MR. BLUME) Finally, Exhibit 4027 is<br/>19 an e-mail Bates labeled DONZ 00054331.</p> <p>20 MR. TREECE: Did I get 4026? Thanks.</p> <p>21 Q (BY MR. BLUME) Just for purposes of<br/>22 getting the documents in line, Mr. McDermott, on<br/>23 4024, it's an e-mail chain dated 22 February 2010<br/>24 from Ericka Englert to Mike Crimmins at Gibson Dunn.</p> <p>25 Do you see that?</p> |
| <p style="text-align: right;">Page 143</p> <p>1 Q Oh, I'm sorry.</p> <p>2 A I'm almost finished reading it. My<br/>3 apologies. I do remember.</p> <p>4 Q And does this refresh your recollection<br/>5 that you appeared before Judge Kane on<br/>6 March 4th, 2010?</p> <p>7 A Yes.</p> <p>8 Q Directing your attention to the very last<br/>9 bullet point where you note in all bold, quote, I<br/>10 must rely upon Andrew and Steven to confirm the<br/>11 accuracy of these statements. If I make them and<br/>12 then Judge Kane later concludes they are wrong, he<br/>13 will be one pissed off federal judge.</p> <p>14 Do you recall why you wrote that?</p> <p>15 MR. GOMEZ: Objection. Work product.</p> <p>16 THE SPECIAL MASTER: Waived. Overruled.</p> <p>17 A Well, as to the first sentence, I was<br/>18 having to rely upon Andrew and Steven because we<br/>19 didn't have an independent source for the facts I was<br/>20 proposing to represent to Judge Kane. And I made the<br/>21 second comment because Judge Kane, like every other<br/>22 judge, wants people to be honest with him.</p> <p>23 Q (BY MR. BLUME) Was this e-mail kept in<br/>24 the ordinary course of business of the Brownstein<br/>25 firm?</p> | <p style="text-align: right;">Page 145</p> <p>1 A The top e-mail on 4024?</p> <p>2 Q Yes.</p> <p>3 A Yes.</p> <p>4 Q And do you recognize these as being part<br/>5 of the meet and confer process you referred to<br/>6 earlier?</p> <p>7 A Yes.</p> <p>8 Q And was it the ordinary course of business<br/>9 of the Brownstein firm to maintain e-mails such as<br/>10 this in the ordinary course of its business?</p> <p>11 A Yes.</p> <p>12 Q And was it the ordinary course of its<br/>13 business to maintain these e-mails?</p> <p>14 A Yes.</p> <p>15 Q I didn't ask that right. My first<br/>16 question was, was this e-mail maintained in the<br/>17 ordinary course of business of Brownstein Hyatt?</p> <p>18 A Yes.</p> <p>19 Q And it was the ordinary course to keep<br/>20 such documents?</p> <p>21 A Yes.</p> <p>22 Q 2025 (sic), which is --</p> <p>23 A 4025.</p> <p>24 Q I'm sorry. 4025, which is an e-mail<br/>25 exchange from Ericka Englert to Steven Donziger dated</p>  |

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| <p style="text-align: right;">Page 146</p> <p>1 the same day, February 22nd.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q And it seems that Ms. Englert is</p> <p>5 forwarding to Mr. Donziger the e-mail from</p> <p>6 Mr. Crimmins.</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q And was this e-mail kept in the ordinary</p> <p>10 course of Brownstein's business?</p> <p>11 A Yes.</p> <p>12 Q And was it the ordinary course of business</p> <p>13 for the Brownstein firm to maintain these e-mails?</p> <p>14 A Yes.</p> <p>15 Q She references in the third sentence, As</p> <p>16 soon as you get a chance, will you let me know the</p> <p>17 background of these documents?</p> <p>18 Was it consistent with the practice of</p> <p>19 your team to check with Mr. Donziger on facts such as</p> <p>20 this, background of documents and the like?</p> <p>21 A Yes.</p> <p>22 Q Direct your attention to 4026, which is</p> <p>23 another e-mail of the same date from Ericka Englert</p> <p>24 to Steven Donziger.</p> <p>25 Do you see that?</p>  | <p style="text-align: right;">Page 148</p> <p>1 MR. GOMEZ: Objection. Form.</p> <p>2 THE SPECIAL MASTER: I think I agree. The</p> <p>3 form is bad. Rephrase.</p> <p>4 Q (BY MR. BLUME) Do you recall whether --</p> <p>5 Do you see that Ms. Englert asked whether</p> <p>6 there -- whether we have a good explanation as to how</p> <p>7 this happened.</p> <p>8 Do you understand that this happened,</p> <p>9 being sections of the Stratus report is very similar</p> <p>10 to Cabrera's?</p> <p>11 A Yes.</p> <p>12 Q And do you recall whether --</p> <p>13 MR. GOMEZ: Objection. Form.</p> <p>14 THE SPECIAL MASTER: What was the nature</p> <p>15 of the objection?</p> <p>16 MR. GOMEZ: Form.</p> <p>17 THE SPECIAL MASTER: And I just said</p> <p>18 overruled.</p> <p>19 Q (BY MR. BLUME) And do you recall</p> <p>20 specifically whether Mr. Donziger ever explained to</p> <p>21 you or anyone on your team why sections of Stratus's</p> <p>22 report are similar to Cabrera's?</p> <p>23 MR. GOMEZ: Objection. Privilege.</p> <p>24 THE SPECIAL MASTER: Overruled.</p> <p>25 A Yes, I do recall.</p>  |
| <p style="text-align: right;">Page 147</p> <p>1 A Yes.</p> <p>2 Q Was this an e-mail that was kept in the</p> <p>3 ordinary course of the Brownstein firm's business?</p> <p>4 A Yes.</p> <p>5 Q Was it the ordinary course of business to</p> <p>6 maintain such a document?</p> <p>7 A Yes.</p> <p>8 Q Ms. Englert notes -- references</p> <p>9 Mr. Crimmins's discussion of Stratus's reports as</p> <p>10 being similar to Mr. Cabrera's. And in the third</p> <p>11 sentence says, Do we have a good explanation as to</p> <p>12 how this happened or is it our position that the</p> <p>13 sections are not actually that similar or that</p> <p>14 Stratus's report takes sections from Cabrera's</p> <p>15 report?</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Do you know whether or not you or your</p> <p>19 team ever got an answer to any of those questions?</p> <p>20 A I don't recall. I don't recall. I don't</p> <p>21 recall getting an answer, but --</p> <p>22 Q Let me be more specific. Do you recall</p> <p>23 whether Mr. Donziger provided to you a good</p> <p>24 explanation as to how this happened? That is, why</p> <p>25 the Stratus report is very similar to Cabrera's?</p> | <p style="text-align: right;">Page 149</p> <p>1 Q (BY MR. BLUME) What do you recall?</p> <p>2 A Well, I recall two things. Number one, I</p> <p>3 recall that when they got back from -- when</p> <p>4 Mr. Donziger and maybe others got back from Ecuador,</p> <p>5 they provided us an explanation in that memorandum</p> <p>6 that we talked about a bit earlier.</p> <p>7 And the second thing I recall is that when</p> <p>8 Mr. Donziger talked about this issue, he talked about</p> <p>9 it in a way that conveyed to us that it was proper</p> <p>10 under Ecuadorian law.</p> <p>11 And so whatever he told us was contrary to</p> <p>12 what Mr. Shinder told us, which in part is why we</p> <p>13 withdrew.</p> <p>14 THE SPECIAL MASTER: I'm adding to the</p> <p>15 overruling, the grounds for overruling the objection,</p> <p>16 crime fraud exception. Communications from</p> <p>17 Mr. Donziger to this witness that he just described</p> <p>18 meet the furtherance of the fraud prong of the crime</p> <p>19 fraud exception.</p> <p>20 Q (BY MR. BLUME) Finally, 4027 before you</p> <p>21 is an e-mail from Ericka Englert to Steven Donziger,</p> <p>22 dated 22 February 2010, copying you and Mr. Hoke.</p> <p>23 The first portion of which is a -- well,</p> <p>24 do you recognize this e-mail?</p> <p>25 A I do not recall this -- I do not recall</p> |

|   |  |
|---|--|
| <p style="text-align: right;">Page 150</p> <p>1 4027.</p> <p>2 Q Okay. Being that it's an e-mail from</p> <p>3 Ms. Englert, was an e-mail such as this kept in the</p> <p>4 ordinary course of business at the Brownstein firm?</p> <p>5 A Assuming 4027 came from our files, yes.</p> <p>6 Q Well, the production came from</p> <p>7 Mr. Donziger's file, DONZ 000 54321. Would it be --</p> <p>8 would e-mails similar to this be kept in the ordinary</p> <p>9 course of Brownstein's business, as it related to</p> <p>10 client matters?</p> <p>11 A Yes. And I don't have any reason to</p> <p>12 believe these aren't e-mails from and to our firm.</p> <p>13 Q Okay. And it was the ordinary course of</p> <p>14 the Brownstein firm to keep such e-mails?</p> <p>15 A Yes.</p> <p>16 Q Do you recall --</p> <p>17 THE SPECIAL MASTER: Five-minute warning,</p> <p>18 Mr. Blume.</p> <p>19 MR. BLUME: I'm sorry?</p> <p>20 THE SPECIAL MASTER: Five-minute warning.</p> <p>21 MR. BLUME: Perfect. Thank you, Your</p> <p>22 Honor.</p> <p>23 Q (BY MR. BLUME) This e-mail suggests or</p> <p>24 Mr. Donziger writes to Ms. Englert below and signs</p> <p>25 her name. Was it -- were you surprised to learn when</p>   | <p style="text-align: right;">Page 152</p> <p>1 Q (BY MR. BLUME) This is Mr. Treece on</p> <p>2 22 June 2010. It's forwarding to you an e-mail that</p> <p>3 he sent to Jay Horowitz. And this is production</p> <p>4 BHFS 126 through BHFS 142.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And is this a document that was prepared</p> <p>8 in the ordinary course of the Brownstein firm's</p> <p>9 business?</p> <p>10 A Yes.</p> <p>11 Q And was it the ordinary course of the</p> <p>12 Brownstein firm to maintain this document?</p> <p>13 A Yes.</p> <p>14 Q And is the time frame of June 2010</p> <p>15 consistent with what you'd mentioned earlier, around</p> <p>16 the time when there was a dispute about your fees in</p> <p>17 this matter?</p> <p>18 A Well, it was a dispute from Mr. Donziger's</p> <p>19 perspective. We didn't consider it a dispute.</p> <p>20 Q And Mr. Treece suggests in his e-mail</p> <p>21 below that he's being asked about the work product.</p> <p>22 And do you understand this e-mail to</p> <p>23 submit to Mr. Horowitz some of that work product?</p> <p>24 A Yes.</p> <p>25 THE SPECIAL MASTER: Two-minute warning.</p> |
| <p style="text-align: right;">Page 151</p> <p>1 you saw this e-mail that Mr. Donziger had drafted an</p> <p>2 e-mail for Ericka to send during the meet and confer</p> <p>3 process?</p> <p>4 A No, because my understanding is that</p> <p>5 Mr. Donziger proposed this e-mail as one that Ericka</p> <p>6 send (sic) to Mr. Crimmins, I believe, if that's the</p> <p>7 name of your partner.</p> <p>8 So, no, it didn't surprise me.</p> <p>9 Q Okay. Was that consistent with your</p> <p>10 relationship that you would take instruction to this</p> <p>11 detail from Mr. Donziger?</p> <p>12 A No. I mean, I typically would not -- I</p> <p>13 don't know whether we asked him to do this or not.</p> <p>14 But that's not my practice.</p> <p>15 Q In this instance was -- well, strike that.</p> <p>16 (Exhibit 4028 marked.)</p> <p>17 Q (BY MR. BLUME) Let me place before you</p> <p>18 what is marked as 4028. 4028 is a package of</p> <p>19 attachments in a cover e-mail from Lawrence Treece,</p> <p>20 the top part of which is Mr. Treece sending to</p> <p>21 Mr. Beyer, to you, to Ms. Englert --</p> <p>22 THE SPECIAL MASTER: We don't have the</p> <p>23 document. What are you talking about?</p> <p>24 MR. BLUME: My apologies, Your Honor.</p> <p>25 tab 56. Sorry.</p> | <p style="text-align: right;">Page 153</p> <p>1 (Exhibit 4029 marked.)</p> <p>2 Q (BY MR. BLUME) And then let me place</p> <p>3 before you what is marked as 4029. That's tab 57.</p> <p>4 And that's a letter from the Brownstein firm to Jay</p> <p>5 Horowitz, dated 29 June.</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q And is this a record that was kept in the</p> <p>9 ordinary course of business of the Brownstein firm?</p> <p>10 A Yes.</p> <p>11 Q And one that the Brownstein firm keeps in</p> <p>12 its ordinary course?</p> <p>13 A Yes.</p> <p>14 Q And this is Mr. Treece discussing this fee</p> <p>15 dispute that you mentioned?</p> <p>16 A Yes.</p> <p>17 Q Okay. And then one more, Mr. McDermott.</p> <p>18 (Exhibit 4030 marked.)</p> <p>19 Q (BY MR. BLUME) 4030, and that's tab 53.</p> <p>20 And this is an e-mail from you, sir, on</p> <p>21 March 19th, 2010 to Michael Hoke, copy Ericka</p> <p>22 Englert. And a series of e-mails below Bates labeled</p> <p>23 BHFS 179 to 180.</p> <p>24 Do you see these?</p> <p>25 A Yes.</p>  |

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| <p style="text-align: right;">Page 154</p> <p>1 Q Do you remember or recollect this e-mail?</p> <p>2 A Yes.</p> <p>3 Q What do you remember about it?</p> <p>4 A Well, I just remember that, you know,<br/>5 Michael was corresponding --</p> <p>6 THE SPECIAL MASTER: Are you going to make<br/>7 it a business record path, because your time is going<br/>8 to run.</p> <p>9 Q (BY MR. BLUME) Was this e-mail kept in<br/>10 the ordinary course of the business of the Brownstein<br/>11 firm?</p> <p>12 A Yes.</p> <p>13 Q And was it the ordinary course of business<br/>14 to maintain such an e-mail record?</p> <p>15 A Yes.</p> <p>16 Q And if you could tell us briefly what do<br/>17 you recall about the conversation you were having<br/>18 with your team on March 19th, 2010?</p> <p>19 A Well, I just recall that there were<br/>20 additional discussions with the Gibson Dunn lawyers<br/>21 during the meet and confer process.</p> <p>22 Q Okay.</p> <p>23 THE SPECIAL MASTER: Your time is up,<br/>24 Mr. Blume.</p> <p>25 MR. BLUME: That's all I have.</p>   | <p style="text-align: right;">Page 156</p> <p>1 MR. GOMEZ: Yes.</p> <p>2 A All that I recall receiving is what we<br/>3 reviewed today. There were one or two items. There<br/>4 was the provision of Ecuadorian law. I don't recall<br/>5 what that dealt with specifically. And then I<br/>6 believe there was the memo that Mr. Donziger sent<br/>7 upon his return from Ecuador, where I thought he<br/>8 generally described some Ecuadorian law principles or<br/>9 said he was going to follow up.</p> <p>10 Q (BY MR. GOMEZ) Did you ever feel that you<br/>11 received sufficient information, that that was<br/>12 sufficient information for you to make an assessment<br/>13 regarding Ecuadorian law as it pertained to Cabrera?</p> <p>14 MR. BLUME: Objection. Form.</p> <p>15 A I never felt I had any information that<br/>16 would permit me to make any judgments about<br/>17 Ecuadorian law, as I recall.</p> <p>18 Q (BY MR. GOMEZ) Is it fair to say that you<br/>19 received inconsistent information regarding Stratus's<br/>20 contact with Cabrera?</p> <p>21 A Yes.</p> <p>22 Q And finally, is it fair to say that you<br/>23 never had sufficient information either regarding the<br/>24 Ecuadorian law or Stratus's contact to make your own<br/>25 assessment whether the conduct in Ecuador was proper</p> |
| <p style="text-align: right;">Page 155</p> <p>1 THE SPECIAL MASTER: Mr. Blume, your time<br/>2 is up.</p> <p>3 MR. BLUME: That's all I have, Your Honor.</p> <p>4 THE SPECIAL MASTER: Okay. Thank you,<br/>5 everyone. Thank you, Mr. McDermott, thank you,<br/>6 Mr. Gomez.</p> <p>7 MR. GOMEZ: Excuse me, Mr. Gitter, this is<br/>8 Mr. Gomez. May I ask three questions?</p> <p>9 THE SPECIAL MASTER: Of course.</p> <p>10 EXAMINATION</p> <p>11 BY MR. GOMEZ:</p> <p>12 Q Good afternoon, Mr. McDermott.</p> <p>13 A Good afternoon.</p> <p>14 Q Mr. McDermott, is it fair to say that you<br/>15 and your law firm received little or no information<br/>16 regarding Ecuadorian law as it pertains to the<br/>17 contact with Mr. Cabrera in the Lago Agrio<br/>18 litigation?</p> <p>19 MR. BLUME: Objection. Form.</p> <p>20 A The only thing that --</p> <p>21 THE SPECIAL MASTER: Overruled. You can<br/>22 answer it.</p> <p>23 THE DEPONENT: I'm sorry, Your Honor.</p> <p>24 THE SPECIAL MASTER: The question is<br/>25 unclear. Received in any fashion, Mr. Gomez?</p> | <p style="text-align: right;">Page 157</p> <p>1 or not?</p> <p>2 MR. BLUME: Objection. Form.</p> <p>3 THE SPECIAL MASTER: Is there an<br/>4 objection? Mr. Blume, what is the nature of your<br/>5 objection?</p> <p>6 MR. BLUME: Just the form of the question.</p> <p>7 THE SPECIAL MASTER: Hold on a second.<br/>8 Let's see. Hold on.</p> <p>9 MR. BLUME: Compound, Your Honor.</p> <p>10 THE SPECIAL MASTER: I'm looking at the<br/>11 LiveNote. Yes, it's compound.</p> <p>12 Rephrase.</p> <p>13 Q (BY MR. GOMEZ) Mr. McDermott, is it fair<br/>14 to say that you never received sufficient information<br/>15 regarding Ecuadorian law in order to make your own<br/>16 assessment, your own independent assessment whether<br/>17 the actions relating to Cabrera were proper?</p> <p>18 MR. BLUME: Objection. Form.</p> <p>19 THE SPECIAL MASTER: I'll allow it. I'll<br/>20 allow it.</p> <p>21 A If I understand your question, it's do I<br/>22 have -- did I ever get sufficient information about<br/>23 Ecuadorian law to know whether there was misconduct<br/>24 under Ecuadorian law regarding Stratus and Cabrera.</p> <p>25 Q (BY MR. GOMEZ) Yes.</p>  |

| <p style="text-align: right;">Page 158</p> <p>1 A Is that the question?<br/>     2 Q Yes.<br/>     3 A Well, I think the answer is -- I mean, I<br/>     4 can't cite any Ecuadorian statute or case law as a<br/>     5 basis for saying it was right or wrong. You know --<br/>     6 MR. GOMEZ: Thank you, Mr. McDermott.<br/>     7 THE SPECIAL MASTER: Wait a minute. He's<br/>     8 in the middle of his answer, Mr. Gomez.<br/>     9 MR. GOMEZ: I'm sorry.<br/>     10 Q (BY MR. GOMEZ) Please finish.<br/>     11 A I can only say that based upon what was<br/>     12 then 28 years of experience, things appeared very<br/>     13 fishy to me. I don't know that I've -- I don't know<br/>     14 how many cases I've withdrawn from for ethical<br/>     15 reasons.<br/>     16 I can probably count them on two or three<br/>     17 fingers. So it's not a decision that I made lightly.<br/>     18 But I was deeply troubled.<br/>     19 THE SPECIAL MASTER: Thank you,<br/>     20 Mr. McDermott. Thank you, Mr. Gomez. The deposition<br/>     21 is now concluded.<br/>     22 THE VIDEOGRAPHER: We're off the record at<br/>     23 2:09.<br/>     24 (Proceedings concluded at 2:09 p.m.)<br/>     25 * * * * *</p> | <p style="text-align: right;">Page 160</p> <p>1 STATE OF COLORADO)<br/>     2 ) ss. REPORTER'S CERTIFICATE<br/>     3 COUNTY OF DENVER )<br/>     4 I, Kelly A. Mackereth, do hereby certify<br/>     5 that I am a Registered Professional Reporter and<br/>     6 Notary Public within the State of Colorado; that<br/>     7 previous to the commencement of the examination, the<br/>     8 deponent was duly sworn to testify to the truth.<br/>     9 I further certify that this deposition was<br/>     10 taken in shorthand by me at the time and place herein<br/>     11 set forth, that it was thereafter reduced to<br/>     12 typewritten form, and that the foregoing constitutes<br/>     13 a true and correct transcript.<br/>     14 I further certify that I am not related to,<br/>     15 employed by, nor of counsel for any of the parties or<br/>     16 attorneys herein, nor otherwise interested in the<br/>     17 result of the within action.<br/>     18 In witness whereof, I have affixed my<br/>     19 signature this 22nd day of May, 2013.<br/>     20 My commission expires April 21, 2015.<br/>     21<br/>     22</p> <hr/> <p style="text-align: center;">Kelly A. Mackereth, CRR, RPR, CLT<br/>216 - 16th Street, Suite 600<br/>Denver, Colorado 80202</p> <p>23<br/>     24<br/>     25</p> |             |      |           |   |           |     |
|---|---|-------------|------|-----------|---|-----------|-----|
| <p style="text-align: right;">Page 159</p> <p>1 ACKNOWLEDGMENT OF DEPONENT<br/>     2 I, JOHN McDERMOTT, do hereby certify<br/>     3 that I have read the foregoing transcript of my<br/>     4 testimony, and further certify that it is a true<br/>     5 and accurate record of my testimony (with the<br/>     6 exception of the corrections listed below):<br/>     7 Page Line Correction<br/>     8 _____<br/>     9 _____<br/>     10 _____<br/>     11 _____<br/>     12 _____<br/>     13 _____<br/>     14 _____<br/>     15 _____<br/>     16 _____<br/>     17 _____<br/>     18 _____<br/>     19 _____<br/>     20 _____<br/>     21 _____<br/>     22<br/>     JOHN McDERMOTT<br/>     23 SUBSCRIBED AND SWORN TO BEFORE ME<br/>     24 THIS ____ DAY OF _____, 20____.<br/>     25 (NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>  | <p style="text-align: right;">Page 161</p> <table> <thead> <tr> <th style="text-align: left;">EXAMINATION</th> <th style="text-align: right;">PAGE</th> </tr> </thead> <tbody> <tr> <td>MR. BLUME</td> <td style="text-align: right;">7</td> </tr> <tr> <td>MR. GOMEZ</td> <td style="text-align: right;">155</td> </tr> </tbody> </table> <p>5 PRODUCTION REQUEST(S):<br/>     6<br/>     7<br/>     8 INDEX OF EXHIBITS<br/>     9<br/>     10 DESCRIPTION INITIAL REFERENCE<br/>     11<br/>     12 Exhibit 4000 Brownstein Hyatt Farber 20<br/>     Schreck, LLP billing<br/>     13 Exhibit 4001 2/26/10 letter to Donziger 24<br/>     from McDermott<br/>     14<br/>     15 Exhibit 4002 6/18/10 e-mail from Horowitz 27<br/>     to Trecce<br/>     16 Exhibit 4003A E-mail string between 34<br/>     McDermott and Donziger<br/>     17<br/>     18 Exhibit 4003B Yaiguaje, et al. v. Chevron 34<br/>     Complaint to Stay<br/>     Arbitration<br/>     19<br/>     20 Exhibit 4004A 1/19/10 e-mail from Woods to 54<br/>     McDermott<br/>     21 Exhibit 4004B Chevron 28U.S.C. 1782 54<br/>     Petition<br/>     22<br/>     23 Exhibit 4005 E-mail string between 61<br/>     McDermott and Donziger<br/>     24<br/>     25</p>   | EXAMINATION | PAGE | MR. BLUME | 7 | MR. GOMEZ | 155 |
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| <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">INITIAL<br/>REFERENCE</th> </tr> <tr> <th colspan="2" style="text-align: center;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td>1</td><td>Page 163</td></tr> <tr><td>2</td><td>Exhibit 4018A 3/1/10 e-mail from Woods to 126</td></tr> <tr><td>3</td><td>Englert</td></tr> <tr><td>4</td><td>Exhibit 4018B Donziger memo re Chevron 126</td></tr> <tr><td>5</td><td>contamination in Ecuador</td></tr> <tr><td>6</td><td>Exhibit 4019A 3/2/10 e-mail from Englert 129</td></tr> <tr><td>7</td><td>to Donziger and Woods</td></tr> <tr><td>8</td><td>Exhibit 4019B Outline for Fact Section of 129</td></tr> <tr><td>9</td><td>Brief in Opposition to</td></tr> <tr><td>10</td><td>Chevron's 1782 Petition</td></tr> <tr><td>11</td><td>Exhibit 4020A 3/9/10 e-mail from Page to 133</td></tr> <tr><td>12</td><td>McDermott, Englert and Hoke</td></tr> <tr><td>13</td><td>Exhibit 4020B 3/9/10 e-mail to McDermott, 133</td></tr> <tr><td>14</td><td>Englert and Hoke from Page,</td></tr> <tr><td>15</td><td>Donziger and Garr</td></tr> <tr><td>16</td><td>Exhibit 4021 Motion for 30-Day Leave to 139</td></tr> <tr><td>17</td><td>File Brief In Opposition to</td></tr> <tr><td>18</td><td>Chevron's 28 U.S.C. 1782</td></tr> <tr><td>19</td><td>Petition</td></tr> <tr><td>20</td><td>Exhibit 4022A 3/4/10 e-mail from Donziger 140</td></tr> <tr><td>21</td><td>to Englert, McDermott, and</td></tr> <tr><td>22</td><td>Hoke</td></tr> <tr><td>23</td><td>Exhibit 4022B 3/4/10 e-mail to McDermott, 140</td></tr> <tr><td>24</td><td>Englert and Hoke from</td></tr> <tr><td>25</td><td>Donziger</td></tr> <tr><td>1</td><td>Exhibit 4023 3/4/10 e-mail from McDermott 142</td></tr> <tr><td>2</td><td>to Donziger, Hoke, and</td></tr> <tr><td>3</td><td>Englert</td></tr> <tr><td>4</td><td>Exhibit 4024 E-mail string re Attached 144</td></tr> <tr><td>5</td><td>letter re Chevron Petition</td></tr> <tr><td>6</td><td>Exhibit 4025 E-mail string re Attached 144</td></tr> <tr><td>7</td><td>letter re Chevron Petition</td></tr> </tbody> </table> | INITIAL<br>REFERENCE                          |  | DESCRIPTION |  | 1 | Page 163 | 2 | Exhibit 4018A 3/1/10 e-mail from Woods to 126 | 3 | Englert | 4 | Exhibit 4018B Donziger memo re Chevron 126 | 5 | contamination in Ecuador | 6 | Exhibit 4019A 3/2/10 e-mail from Englert 129 | 7 | to Donziger and Woods | 8 | Exhibit 4019B Outline for Fact Section of 129 | 9 | Brief in Opposition to | 10 | Chevron's 1782 Petition | 11 | Exhibit 4020A 3/9/10 e-mail from Page to 133 | 12 | McDermott, Englert and Hoke | 13 | Exhibit 4020B 3/9/10 e-mail to McDermott, 133 | 14 | Englert and Hoke from Page, | 15 | Donziger and Garr | 16 | Exhibit 4021 Motion for 30-Day Leave to 139 | 17 | File Brief In Opposition to | 18 | Chevron's 28 U.S.C. 1782 | 19 | Petition | 20 | Exhibit 4022A 3/4/10 e-mail from Donziger 140 | 21 | to Englert, McDermott, and | 22 | Hoke | 23 | Exhibit 4022B 3/4/10 e-mail to McDermott, 140 | 24 | Englert and Hoke from | 25 | Donziger | 1 | Exhibit 4023 3/4/10 e-mail from McDermott 142 | 2 | to Donziger, Hoke, and | 3 | Englert | 4 | Exhibit 4024 E-mail string re Attached 144 | 5 | letter re Chevron Petition | 6 | Exhibit 4025 E-mail string re Attached 144 | 7 | letter re Chevron Petition | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="2" style="text-align: center;">INITIAL<br/>REFERENCE</th> </tr> <tr> <th colspan="2" style="text-align: center;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td>1</td><td>Page 164</td></tr> <tr><td>2</td><td>Exhibit 4026 E-mail string re Attached 144</td></tr> <tr><td>3</td><td>letter re Chevron Petition</td></tr> <tr><td>4</td><td>Exhibit 4027 E-mail string re how does 144</td></tr> <tr><td>5</td><td>the below sound to you...</td></tr> <tr><td>6</td><td>Exhibit 4028 E-mail string re Chevron 151</td></tr> <tr><td>7</td><td>Works Product</td></tr> <tr><td>8</td><td>Exhibit 4029 6/29/10 letter to Horowitz 153</td></tr> <tr><td>9</td><td>from Treence</td></tr> <tr><td>10</td><td>Exhibit 4030 E-mail string re Chevron 153</td></tr> <tr><td>11</td><td>PREVIOUSLY MARKED EXHIBITS</td></tr> <tr><td>12</td><td>Exhibit 1633 5/24/10 e-mail from McDermott 80</td></tr> <tr><td>13</td><td>to Donziger, w/attachment</td></tr> <tr><td>14</td><td></td></tr> <tr><td>15</td><td></td></tr> <tr><td>16</td><td></td></tr> <tr><td>17</td><td></td></tr> <tr><td>18</td><td></td></tr> <tr><td>19</td><td></td></tr> <tr><td>20</td><td></td></tr> <tr><td>21</td><td></td></tr> <tr><td>22</td><td></td></tr> <tr><td>23</td><td></td></tr> <tr><td>24</td><td></td></tr> <tr><td>25</td><td></td></tr> </tbody> </table> | INITIAL<br>REFERENCE |  | DESCRIPTION |  | 1 | Page 164 | 2 | Exhibit 4026 E-mail string re Attached 144 | 3 | letter re Chevron Petition | 4 | Exhibit 4027 E-mail string re how does 144 | 5 | the below sound to you... | 6 | Exhibit 4028 E-mail string re Chevron 151 | 7 | Works Product | 8 | Exhibit 4029 6/29/10 letter to Horowitz 153 | 9 | from Treence | 10 | Exhibit 4030 E-mail string re Chevron 153 | 11 | PREVIOUSLY MARKED EXHIBITS | 12 | Exhibit 1633 5/24/10 e-mail from McDermott 80 | 13 | to Donziger, w/attachment | 14 |  | 15 |  | 16 |  | 17 |  | 18 |  | 19 |  | 20 |  | 21 |  | 22 |  | 23 |  | 24 |  | 25 |  |
|---|---|--|-------------|--|---|----------|---|---|---|---------|---|--|---|--------------------------|---|--|---|-----------------------|---|---|---|------------------------|----|-------------------------|----|--|----|-----------------------------|----|---|----|-----------------------------|----|-------------------|----|---|----|-----------------------------|----|--------------------------|----|----------|----|---|----|----------------------------|----|------|----|---|----|-----------------------|----|----------|---|---|---|------------------------|---|---------|---|--|---|----------------------------|---|--|---|----------------------------|---|----------------------|--|-------------|--|---|----------|---|--|---|----------------------------|---|--|---|---------------------------|---|---|---|---------------|---|---|---|--------------|----|---|----|----------------------------|----|---|----|---------------------------|----|--|----|--|----|--|----|--|----|--|----|--|----|--|----|--|----|--|----|--|----|--|----|--|
| INITIAL<br>REFERENCE  |   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| DESCRIPTION   |   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 1   | Page 163                                      |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 2   | Exhibit 4018A 3/1/10 e-mail from Woods to 126 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 3   | Englert                                       |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 4   | Exhibit 4018B Donziger memo re Chevron 126    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 5   | contamination in Ecuador                      |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 6   | Exhibit 4019A 3/2/10 e-mail from Englert 129  |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 7   | to Donziger and Woods                         |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 8   | Exhibit 4019B Outline for Fact Section of 129 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 9   | Brief in Opposition to                        |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 10  | Chevron's 1782 Petition                       |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 11  | Exhibit 4020A 3/9/10 e-mail from Page to 133  |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 12  | McDermott, Englert and Hoke                   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 13  | Exhibit 4020B 3/9/10 e-mail to McDermott, 133 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 14  | Englert and Hoke from Page,                   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 15  | Donziger and Garr                             |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 16  | Exhibit 4021 Motion for 30-Day Leave to 139   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 17  | File Brief In Opposition to                   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 18  | Chevron's 28 U.S.C. 1782                      |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 19  | Petition                                      |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 20  | Exhibit 4022A 3/4/10 e-mail from Donziger 140 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 21  | to Englert, McDermott, and                    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 22  | Hoke  |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 23  | Exhibit 4022B 3/4/10 e-mail to McDermott, 140 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 24  | Englert and Hoke from                         |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 25  | Donziger                                      |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 1   | Exhibit 4023 3/4/10 e-mail from McDermott 142 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 2   | to Donziger, Hoke, and                        |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 3   | Englert                                       |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 4   | Exhibit 4024 E-mail string re Attached 144    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 5   | letter re Chevron Petition                    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 6   | Exhibit 4025 E-mail string re Attached 144    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 7   | letter re Chevron Petition                    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| INITIAL<br>REFERENCE  |   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| DESCRIPTION   |   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 1   | Page 164                                      |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 2   | Exhibit 4026 E-mail string re Attached 144    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 3   | letter re Chevron Petition                    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 4   | Exhibit 4027 E-mail string re how does 144    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 5   | the below sound to you...                     |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 6   | Exhibit 4028 E-mail string re Chevron 151     |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 7   | Works Product                                 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 8   | Exhibit 4029 6/29/10 letter to Horowitz 153   |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 9   | from Treence                                  |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 10  | Exhibit 4030 E-mail string re Chevron 153     |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 11  | PREVIOUSLY MARKED EXHIBITS                    |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 12  | Exhibit 1633 5/24/10 e-mail from McDermott 80 |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
| 13  | to Donziger, w/attachment                     |  |             |  |   |          |   |   |   |         |   |  |   |                          |   |  |   |                       |   |   |   |                        |    |                         |    |  |    |                             |    |   |    |                             |    |                   |    |   |    |                             |    |                          |    |          |    |   |    |                            |    |      |    |   |    |                       |    |          |   |   |   |                        |   |         |   |  |   |                            |   |  |   |                            |   |                      |  |             |  |   |          |   |  |   |                            |   |  |   |                           |   |   |   |               |   |   |   |              |    |   |    |                            |    |   |    |                           |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |    |  |
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